















THE STATE OF THE QUESTION

—OF—

Jurisdiction AND Boundary

—BETWEEN—

NEW JERSEY AND DELAWARE.

A. D. 1873.

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## The State of the Question of Jurisdiction and Boundary between New Jersey and Delaware, A. D. 1873.

The dispute arises out of the arrest, in Delaware river, of twenty-two New Jersey fishermen by Delaware authorities, in May, 1872, for fishing without taking out license from and paying license fees to Delaware. The fees demanded of Jerseymen are of greater amount than those exacted of citizens of Delaware.

Delaware has never claimed title to any portion of Delaware bay beyond the middle thereof. (*Clayton's argument before John Sergeant, in Pea Patch Arbitration, Senate Ex. Doc., A. D. 1848, No. 21, p. 193; Bayard's argument, p. 139, 140.*)

Delaware has never claimed title to any portion of the river beyond the middle, except that part within the supposed twelve-mile circle. (*Bayard's argument, p. 140.*)

In the case before Mr. Sergeant, in 1848, the right of fishing in the river by Jerseymen was not denied. It was expressly distinguished from right to soil. (*Bayard's argument, pp. 142, 146; Clayton's argument, pp. 197, 198, 200; Mr. Sergeant's opinion, p. 244.*)

As to title to soil of river other than by a valid grant, see (*Bayard's argument, p. 144.*)



Both New Jersey and Delaware *must* claim under crown of England.

I. The New Jersey documentary title commences March 12th, 1663-4, by the grant of Charles II. to Duke of York.

II. It commenced a second time in 1674 by a new grant of Charles II. to the Duke. The title of the Duke—who might still be supposed to retain the *governmental* power for want of express words conveying it in his first grant of June 24th, 1664, to Berkeley and Carteret—was considered defeated by the Dutch conquest, and re-vested in Charles II. by a re-conquest.

III. The New Jersey title, however, has a third commencement in the year 1683, by virtue of the same supposed letters patent, which are the whole basis of the Delaware title—being the alleged grant of Charles II. to the Duke of the supposed twelve-mile circle—which enured to the benefit of New Jersey against the Duke by the estoppel produced by his grant to Byltinge, in August, 1680, three years before his grant from the King, and two years before the Duke's grant to Penn of the supposed twelve-mile circle.

IV. The New Jersey title may also be considered as commencing for the fourth time, and with much broader extent than ever before, by the unity of possession in the crown of New Jersey proper, (if New Jersey did not already include the Delaware river,) and of the adjacent territory—the Delaware river; which unity took place in 1702, on the surrender of the proprietary government. The royal Governors were not only Governors of New Jersey, but of territories thereon depending in America, and Vice Admiral of the same. See *Leaming & Spicer*, p. 8, for *Governor Hunter's title*; also, pp. 635, 655.

V. Title by Revolution of 1776, supposing neither New Jersey nor Delaware to have had title to the river till then.

The following is a statement of the New Jersey titles:

## I.

The grant of Charles II., which was March 12th, 1663-4, <sup>Leaming & Spicer, p. 3.</sup> was for "All the land from the west side of Connecticut to the east side of Delaware bay, together with the rivers, *harbors*, \* \* fishings \* \* and all other royalties \* \* to the said several lands belonging and appertaining, with their and every of their appurtenances," and "full and absolute power and authority to correct, punish, pardon, govern and rule all such subjects, &c., \* \* according to such laws, &c., as by him shall be established, as well in cases and matters \* \* criminal, civil, *marine* and others," reserving appeals from judgments to the King. The Duke was to ordain and *confirm* laws, establish forms of government,; and put in execution the laws he should make, not only *within* the precincts of said territories, but also upon the seas in going to and coming from the same." His Governors "to resist as well by sea as land, all invaders."

The Duke, June 24th, 1664, three months and twelve days after the King's grant to him; by lease and release—reciting the grant of the King as of "All the land from the west side of Connecticut *river* to the east side of Delaware bay, together with the rivers, harbors, \* \* fishings \* \* and all other royalties \* \* appertaining," and as made "with divers other grants"—granted to Berkeley and Carteret in fee, "All that tract of land adjacent to New England, &c., bounded on the east, part by the main sea, part by Hudson's river, and hath on the west Delaware bay or *river*, and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware bay, and to the northward as far as the northernmost branch of the said bay or river of Delaware, &c.; and also all rivers, \* \* fishings \* \* and all other royalties \* \* appertaining, with their and every of their appurtenances, in as full and ample a manner as the same is granted to the Duke." <sup>Leaming & Spicer, p. 8.</sup>

A *rent* was reserved.

1664-5, February 10th. Berkeley and Cartaret *agreed* with settlers that the Assembly should have power to create and appoint such and so many ports, harbors, creeks and other places for the convenient lading and unlading of goods out of ships, <sup>Leaming & Spicer, pp. 12, 15, 16.</sup>

p. 19.

with such jurisdiction, &c., as to such ports, &c., as they shall judge, &c. The Governor to suppress rebellions by sea or land. They grant land for wharves, kays and harbors, and by the next to the last *item*, it is stipulated—

p. 25.

“That the inhabitants of the said Province have free passage through or by any *seas*, bounds, creeks, rivers or rivulets, &c., in the Province, through or by which they must necessarily pass to come from the main ocean to any part of the Province aforesaid.”

## II.

Leaming &  
Spicer, p. 41.

1674, June 29th. Charles II. makes a new grant to the Duke of York. The Dutch had in meantime conquered New Jersey, and it had been re-conquered by England, and doubt was expressed whether the crown was not thereby re-vested with the title to the government and property. This was the reason of the re-grant. The new grant was by the same words as that of 1663-4.

Leaming &  
Spicer, pp. 382,  
409, 390.

1676-7, March 3. The proprietors of West Jersey (*Penn* being one,) though they had not yet received a re-grant of *West* Jersey from the Duke, “agreed and granted convenient portions of land for wharves, kays, harbors, \* \* and also that the in-

habitants \* \* have free pass through or by any seas, bound, creeks, rivers, rivulets in the said Province through or by which they must necessarily pass to come from the main ocean to any part of the Province." "That all the inhabitants within the said Province of West Jersey have the liberty of *fishing* in Delaware river." (*Chapter V., p. 390.*)

Whatever right Penn afterwards acquired in the Delaware river from the crown, was subject to this grant in equity, though he might not have had the title to the river when he, as one of the proprietors of West Jersey, made the above agreement of 1676-7. It would seem that he is estopped to claim a right to exclude Jerseymen from fishing in Delaware.

1680, July 28th. No grant having *yet been made* by the crown of England to the west of New Jersey; and the Duke of York's Governors in New York, without any authority, having repeatedly interfered beyond the Duke's *own* jurisdiction by levying customs on the Delaware river—Penn, as a West Jersey proprietor, drew up an argument to show that the Duke's own grant of 1664 to Berkeley and Carteret, of New Jersey, prevented this exaction, and that the crown itself could not make it. Penn's argument is in *Smith*, p. 117. The Duke referred the matter to Sir William Jones for decision, and on July 28th, 1680, he decided the exaction not warranted by law. This decision was *assented* to by the Duke. The Duke, a few days after this decision, made the new grant of West Jersey to be next stated, which gave the free *use* of the rivers leading to West Jersey.

Ferris' Delaware, 126, note.

Mulford's New Jersey, pp. 186, 187.

Smith's New Jersey, pp. 117, 125.

Mulford's New Jersey, pp. 190, 191.

Ferris, pp. 127, 128.

Jenning's letter of 1680 to Penn shows that this decision was respected.

Ferris' Delaware, p. 127.

1680, August 6th. Duke of York to Byllinge, Penn and others, the *West* Jersey proprietors.

Leaming & Spicer, p. 412.

This deed recites all previous conveyances, and among others, (p. 414,) that Penn and the other West Jersey proprietors had

acquired West Jersey, which extends "along the Delaware *bay or river*."

On p. 415 the Duke *grants* West Jersey to Penn and others by the boundaries, by reference to the recited deeds which describe West Jersey as extending *along* the Delaware river—"together with the rivers \* \* appertaining."

"Also, the free *use* of *all* bays, *ivers* and waters *leading unto* \* \* the said premises \* \* \* for navigation, free trade, fishing or *otherwise*."

And p. 418, "all and every such the same powers, authorities, jurisdictions, governments, and other matters," &c., which were granted to the Duke by the King.

The powers of government are not given to the same parties to whom the land and the free use of the rivers are granted. Byllinge alone took the power of government; Penn and others the land and the free *use* of the river for *all purposes*.

Though the Duke had no title to the Delaware river *then*, he ought not to be permitted in equity to assert that he had no title then, but to be held a trustee of what he afterwards received.

There is rent reserved.

If Duke barred, so is Penn, his grantee, of supposed twelve-mile circle.



1681—*i. e.*, February 28th, 1680-1—King Charles II. grants Pennsylvania to Penn.

Lucas' charters  
Old English Col-  
onies, A. D. 1800,  
p. 100.

This was six months and twenty-two days *after* Duke of York's grant of August 6th, 1680—February, 1680, old style, being *after* August, 1680, old style.

The present State of Delaware had then been long settled by the Swedes. The grant to Penn of Pennsylvania was of "All that tract, &c., as the same is bounded on the east by Delaware river *from twelve miles distant northwards of Newcastle town*, \* \* \* to be bounded on the south by a *circle* drawn at twelve miles distance from Newcastle northwards and westwards unto the beginning of the fortieth degree of north latitude, and then by a straight line westwards." "Also the free and undisturbed use and continuance in and passage into and out of all and singular ports, harbors, bays, waters, rivers, isles, and inlets belonging unto or *leading* to and from the country \* \* \* afore-said."

Powers of *government* are granted in a very full and ample manner.

Laws of Provincial Assembly were, within five years after being made, to be sent to Privy Council. If they were not disapproved within six months after the five years, to *remain* in force.

Power to erect kays, harbors and ports within the Province.

Penn's grant of Pennsylvania is stated merely for the purpose of a complete history of the facts.

III. The third commencement of the New Jersey title cannot be considered, without at the same time considering the Delaware title to some extent.

The Delaware title starts in the month of August, 1682, by a feoffment from the Duke of York; who, it is conceded on all hands, had at that time no grant from the King, except those of 1663-4 and 1674.

The most westerly portion of what the Duke acquired by these grants passed to the New Jersey proprietors by the grant of the Duke, June 24th, 1664, and the re-grant of August 6th, 1680.

The Delaware paper title starts without any lawful basis. The Duke of York might have been the Viceroy of the King, but he had no power to grant crown lands—much less public rivers.

Assuming—what it will be endeavored to be shown is an absurdity too great to be true—that the Duke's feoffment was *intended* to convey the Delaware river within a complete circle of twelve miles all around Newcastle; the Duke could not convey it to Penn, for he had previously conveyed to West Jersey proprietors, by the before-mentioned deed of August 6th, 1680, the free *use* of the river for navigation, fishing or otherwise—*i. e.*, every *use*.

The grant of the *use* of a thing is a grant of the thing.

Penn could not take it, except subject to his own before-mentioned agreement of March 3d, 1676-7, that all the inhabitants of West Jersey should have the liberty of *fishing* in Delaware river.

Indeed, it has never been denied that whatever title Delaware has, it is subject to this right of fishing, even though Penn had never granted it to New Jersey by his agreement of March 3d, 1676-7. [See margin.]

See Bayard's and Clayton's arguments and Sergeant's decision, in Ex. Dec., No. 21, A. D. 1848, pp. 142, 146 197, 198, 200, 244.

It is conceded the Duke had no title in 1682 to the Delaware river, or to anything he purported to grant to Penn by the feoffment.

But it is alleged that he acquired title afterwards by grant from the King, March 22d, 1683.

Mr. Sergeant taking this grant as proved, held that the title of

Penn, under feoffment of 1682, was made good by estoppel against the Duke, or became an equitable title—the Duke being Penn's trustee—by force of his grant without title.

But, manifestly, the Duke would be estopped *first*, as against his earlier grantee of 1680, to whom he granted the use of the river. He would *first* become a trustee for the grantees of 1680—the West Jersey proprietors—to whom he had granted the title as well as government.

The equitable title of Penn is not only younger than the Jersey equitable title, but Penn had distinct *notice* of the older equity. He was one of the grantees of 1680.

But, more than this, he had covenanted by his agreement of 1676—7 that Jerseymen should have the fishing right in the Delaware.

He was not only thereby estopped from taking a grant of the fishing right, and a trustee of it if he took it, but his grantor was bound by a broader equity. His grantor had conveyed the use of the river in 1680, *for all purposes*, to Penn and others, as West Jersey proprietors. His grantor being estopped or trustee, Penn was, to the same extent, especially as he had notice of what his grantor had conveyed.

The King's supposed grant to the Duke of York for the supposed twelve-mile circle, is dated the thirty-fifth year of the King, March 22d, 1682–3, which was nearly seven months *after* the Duke's feoffment to Penn, which bore date August 24th, 1682.

On June 11th, 1683, nearly a year after the feoffment of the Duke to Penn, and nearly three months after the King's supposed grant to the Duke, Penn appointed Commissioners to treat with West Jersey proprietors. His appointment of Commissioners bears date June 11th, 1683; his letter of instructions to Commissioners the same date, and his letter to West Jersey Council same date.

Pennsylvania  
Archives, 1664 to  
1747, pp. 58 to 62.

There is yet another letter of June 20th, 1683, to West Jersey Council. In the commission he speaks of the trade and islands of Pennsylvania and *the territories*, [*i. e.*, Delaware.] In his in-

structions he says his Commissioners must "insist upon his title to the river, soil, and islands thereof, *according to grant*, and if they [*i. e.*, West Jersey,] shall deliver up ye island of Matinicum and Sepassing, he will return one-half of Matinicum before ye town." See also *Leaming & Spicer*, p. 455.

As for Sepassing island, he would not admit any parley about his title. Where Sepassing was I have not ascertained.

He adds, "They [West Jersey proprietors] are bounded westward by the river Delaware, y<sup>n</sup> they cannot go beyond low-water mark for *land*." New Jersey proprietors "have y<sup>e</sup> *liberty of ye river*, but yet no propriety."

In his first letter to the proprietors he desires "a final establishment of a right understanding between us concerning ye river and islands."

In second letter, June 20th, he says that "you [West Jersey Council] are pleased to say y<sup>t</sup> as to the river and islands ye are willing at ye present to be passive, taking it not proper for you to manage, and yet y<sup>r</sup> Commissioners press me about ye right to river."

*Leaming &  
Spicer*, pp. 474,  
480, 481.

In September, 1683, it was resolved by the West Jersey Assembly that Penn be treated with in reference to the rights of West Jersey to or in the Delaware river, and Commissioners were appointed.

#### IV.

The fourth commencement of the New Jersey title is at the surrender of the proprietary government in 1702.

This implies some difference in the nature of the title of the crown to the Delaware *river*, and to the *land* within the three counties.

This may well be, because of the different nature of *river* and *land*.

Though the title of Penn to the land may stand upon possession, the river is incapable of possession.

Besides, Penn, in 1676-7, had agreed to grant land for wharves, kays and harbors, and that the inhabitants should have free pass through seas, rivers, &c., in the Province through or by which they must pass to come from the main ocean to any

part of the Province, and that they should have the liberty of *fishing* in the Delaware.

He had excepted, as one of the West Jersey proprietors, the grant of August, 1680, of the free *use* of all rivers leading to the Province *for all purposes*.

These agreements and grants greatly modified Penn's title, if any, to the river, and yet had no such effect upon the *land* within the three counties.

When, therefore, the crown became possessed of West Jersey, in 1702, all these rights in the river of Jerseymen must have passed to the crown as trustee of the people.

In 1683, in his treaty with West Jersey, he admits the *liberty* in the river of West Jersey.

The Courts of Admiralty of the crown, not dependent on Penn's government at all, exercised great authority on Delaware river. *See from A. D. 1688 on.*

Lord Cornbury, in 1703, exercised jurisdiction over Delaware river. 2 *Pennsylvania Colonial Records*, 99, 100, 421, 422; *Documentary History of New York*, Vol. V., p. 17, (*quarto*.)

Governor Belcher also, in 1747, exercised jurisdiction. 5 *Pennsylvania Colonial Records*, 111.



## V.

Handley's Les-  
see v. Anthony,  
5 Wheaton 379,  
380.

Revolution of 1776 gave title to New Jersey to middle of Delaware river, as neither Delaware nor New Jersey previously had title.

We may assume that New Jersey had none under this fifth head.

Did Delaware have any title prior to Revolution?

Her claim starts under the feoffment of the Duke of York, of August 24th, 1682.

This feoffment is partially set out in *Appendix to 1 Wallace's C. C. R.*, p. 31; also, in *Ex. Doe.*, No. 21, *A. D.* 1848, *Senate*, p. 11.

It is wholly set out in *Vol. I., Delaware Laws* p. 1 of *Appendix*, edited by Booth, *A. D.* 1797; also, in *Vol. I., Pennsylvania Archives*, p. 52.

1. The Duke's grant to Penn is no foundation for the Delaware claim.

The claim to the river within a circle of twelve miles seems really absurd, when the language of this grant is fairly considered.

It must be construed, no doubt, as intending to pass *some* part of the river Delaware.

It grants—

1st. "All that town of Newcastle, [otherwise called Delaware,] and

2d. "All that tract of land lying within the compass or circle of twelve miles about the same, situate, *lying and being upon the river Delaware.*"

3d. "All islands in the river Delaware, and the said river Delaware and soil thereof *lying north* of the southermost *part* of said circle of twelve miles about said town."

It is plain that there are three distinct grants here: 1st. Of Newcastle. 2d. What is in the circle outside of the town "*upon the river,*" excluding Newcastle itself. 3d. The islands and the river lying north of a *part* of a line.

It is equally plain that there was no intention by the *second* grant to convey any *land* that did not lie *upon* the river and

about the town. The *circle* was not to be a boundary toward the east; the *river* was to be the boundary line there. Proud, in his *History of Pennsylvania*, Vol. I., p. 201, says the deed "was for a district of twelve miles round Newcastle as far as the Delaware river."

This is manifest from the following considerations:

1. If the most easterly part of a *complete* circle around Newcastle was to be the boundary towards the east, the second clause of the description would take in the town of Salem, in New Jersey, of which there is no pretence that there was the slightest intention. Penn's counsel in *Breviat* insist that New Jersey is *not contiguous* to three lower counties—i. e., Delaware river between. *Breviat*, 82, 107.

Penn knew all about West Jersey, having an interest there and being a proprietor, and himself owning lands in Salem. *Penn and Logan correspondence*, Vol. I., p. 347, published A. D. 1870.

2. The land described in this second clause must not merely lie within the circle, but "*upon the river*."

If the words "upon the river" do not limit the extent of the land described in the second clause towards the east, it is plain that the intention of the description was to include Salem; but this intention, it is admitted, did not exist.

It is the intention we are looking for. If Penn thought it would take in Salem, he would not have asked for a grant in such terms, for it would be useless. He knew the Duke had twice conveyed Salem—once to Penn himself, as a West Jersey proprietor.

The language of the grant should be construed to have such meaning as to *exclude* Salem. We should not dismiss this extraordinary effect of construing the description as calling for a *complete* circle by saying—as the Duke had no title to Salem and Penn knew it, the grant is void as to *that*. The effect of such a fact upon the deed is to make it plain, that the description should be restrained so as to avoid the imputation of such absurd conduct on the part both of grantor and grantee.

The words "*upon the river*," in the second clause, will restrain the description and prevent Salem being within in it.

3. Land is called for, and land is distinguished in the description itself from the bed of the river, that being called "the soil of the river."

4. The circle should be a boundary no further than the *river*; for there is a distinct grant of land or soil in the river by the *third* clause, in addition to the grant of land *within the circle* in the *second* clause. If, by the word "circle," a complete circle was meant, the soil of the river would already have passed by the *second* clause, and the *third* clause be without any effect whatever. To give, under the *second* clause, the soil or land in the river, would deprive the *third* clause of the grant of any meaning whatever. And yet such must be the necessary effect of the second, if by the word circle was meant a complete circle. The third clause ought to have a significance different from the second—especially as the *second* clause speaks of "land"—land "*upon the river*," not land *in* the river, and the *third* clause of "the soil of the river."

The soil of the river in the *third* clause "lay north of the southernmost part or bound of the circle." The "land" in the *second* clause lay "*upon the river*."

If, by the word "circle" in the *second* clause, were meant a complete circle, the natural, short and easy description of the soil of the river intended to be conveyed would be, "and the soil of the river within the said circle." Indeed, there would have been no words more than those in the second clause; but if, by the word "circle," an incomplete circle was intended, the peculiar circumlocution was necessary to pass any part of the river.

The truth is, the words suggested were not used, because the "circle" before described was not a complete circle.

If a complete circle was meant to be described, the description of the land to be conveyed would have ended with a description of the figure, and there would have been no call for the "river."

These two calls show the circle was not to be complete. Not being complete, there was a necessity for another clause to include a part of the river; and the third clause became necessary

to describe any part of the river which it was intended to pass.

When we consider that the land within the compass or circle of twelve miles about the town, meant only *land* within a part of a circle; and that there could be no "compass" or "circle" of the land "*upon the river*," beyond the river, nor within it,—the circle described as a boundary in the second clause could not be said to have a southernmost *part* anywhere *in* the river. All its parts, as first described, were the boundary of *land* on the west side of the river—"upon the river."

Yet the southernmost part of the circle on the *land* might have islands in the Delaware river, and the river Delaware, and the soil thereof—lying north of it.

Draw a line due north from the west side of the river, where the southernmost part of the circle touches it there; and whatever portion of the river lies between the southernmost part of the circle, and this line drawn due north, is granted.

It is not necessary that this line should be so drawn that it will join the circle again, for the west boundary of the soil of the river must of course be the river bank; and the north bound must also be the river bank, or there is no northern boundary. A line drawn due north would include a part of the river, and thus the soil of the river granted would be bounded on all sides.

No such difficulty results from a line drawn due north, as results from considering the circle described to mean a complete one; for thereby the river is granted twice, and nearly as much land in the State of New Jersey as on the west side of the Delaware. But, by considering the circle incomplete, and a boundary of the land in the second clause described, only where the river was not; and a due north line, the eastern boundary of the description in the third clause,—no part of Salem, New Jersey, is included, though such a due north line should cut it, for it is only the "*soil of the river*" which is granted in the third clause, and it is this clause which calls for the line to the north. No *land* not in the river could pass under such a grant as that contained in the third clause. Such a construction of each clause would not include in one clause, anything granted by the other.

Perhaps the word "islands" may not be qualified by the words "lying north."

5. To consider the circle as complete, would be to pass to Penn the whole of the Delaware river throughout its course, between Pennsylvania and New Jersey.

It would seem that the clear and fair construction of this feoffment was to limit the circle to the land.

A circle was chosen at first, for the southern boundary of Penn's patent of Pennsylvania. The reason was, that the Swedish settlement in Delaware at and about Newcastle, might not be interfered with.

When the Duke of York, the next year, made his feoffment, the circular boundary was well known. Of course Penn knew it, for it was described in his patent. Even there it is called a circle; and it is restrained to mean a *circular* line there, by but two considerations. A complete circle is more than is necessary to describe a boundary; for it describes not merely a line or lines, but the contents; and, second, it is described there as a circle to be drawn to the northwards and westwards. Still it would not be a circle, if only drawn to the northwards and westwards.

No complete circle was meant in either patent or feoffment—it was circular line in both cases.

<sup>1</sup> Wallace C. C. R.  
Appendix, p. 59.

Nothing makes this plainer than this; that of the multitude of maps from 1682 to this time, not one ever has had a complete circle drawn upon it; that a complete circle would include what



is admitted was not intended to be conveyed—Salem, &c. : that other words, as in the *third* clause, are a mere repetition of what preceded them in the *second* clause, if a complete circle was meant; that what was *within* the circle, is called for, as only “*upon*” the river; and this word excludes the river.

So far as the Delaware claim to the river depends upon the *description* in the *feoffment* of the Duke of York to Penn in 1682, it does not extend even to the middle of the river, but covers only a cove in the river.

2d. But, assume that the *feoffment* fairly construed, takes in the whole of the Delaware river, the title of Delaware, it is admitted, is not complete, for the Duke confessedly had no title.

Delaware sets up, however, letters patent to the Duke from the King, bearing date the next year, March 22d, 1683.

The grant by the Duke to Penn, was August 24th, 1682; the King's patent, March 22d, 1682-3, or seven months after the Duke enfeoffed Penn.

Delaware insists that, by virtue of the *feoffment*, the Duke, on being invested with the title, became *estopped* as against Penn; or, became trustee for Penn.

How the *estoppel* could work upon what the Duke did not pretend to convey—the power of government, which is the matter in question—or how he could be trustee of what Penn never could fairly make any claim to—the same power of government—will be afterwards considered.

But New Jersey must formally and distinctly deny that Charles II. ever made the supposed grant of March 22d, 1683; or, if he made it, New Jersey alleges it was surrendered.

*The crown never granted the Delaware river.*

The only grant alleged is this of March 22d, 1683.

See what purports to be a full copy, in 2d Vol. of Hazard's Register of Pennsylvania, p. 27.

There is a multitude of facts which leads to the conclusion that this grant was never made; notwithstanding the production before Mr. Sergeant of the *pretended* original of it, of a certified copy, of a sworn copy, and of a printed copy in Franklin's laws of 1754. (*See 1 Wallace C. C. R., Appendix, p. 40; but better, p. 8 of Ex. Doc., No. 21, Senate, A. D. 1848.*)

That such a patent was sought for and drawn up, is proved by the documents which show it never passed the great seal.

The history of this transaction appears to be this:

It appears that Lord Baltimore, who claimed that his patent of 1636 included Pennsylvania and the three lower counties, applied to the crown to be heard as well before Penn's patent for Pennsylvania, as before the King's supposed grant to the Duke of York for the supposed twelve-mile circle. (1 *Proud* 202, 203, 293.)

Lord Baltimore's resistance to the patent to the Duke for the supposed twelve-mile circle, continued for years. Charles II. died before the question whether the land lay within Lord Baltimore's patent or not, was determined. That was determined November 13th, 1685. (*See the Decree of the King in Council, set out pretty fully in 5 Hazard's Pennsylvania Register, p. 409. See post page*

I have seen this decree in Council in several places. It is variously stated; but in every place it is set out as a decree that the *King* owned the three lower counties—*i. e.*, Delaware.

Proud sets it out partially, (1 *Proud* 293,) but he interpolates, after the judgment, that the counties belong to the King, these words, *viz.*: "to King James, who granted it to W. Penn *when* Duke of York."

The exact text of this decree should be ascertained.

But all the authorities agree that it adjudged the three lower counties to belong to King James II.

This might be true, though the grant of Charles II. to the Duke had been issued, and even had it not been issued.

In 1709, however, a like decree was made in Council by Queen Anne, that the three counties belonged to Queen Anne; and this could not have been made if there had been any grant by Charles II. to Duke of York, and a consequent estoppel against the Duke in favor of Penn. (*See 1 Proud 294; 2 Hazard's Pennsylvania Register 202.*)

These decrees were made by the proper authority. (*Penn v. Lord Baltimore, 1 Vesey, Sen., Ch. R. 447; Dunlop's Memoir, in Memoirs of Historical Society of Pennsylvania, Vol. I., pp. 181, 216, 217.*)

There is great reason to believe that Penn *assumed* that the grant of Charles II. to Duke of York never took effect.

In a statement of Penn's title, made about 1715, to be found in 5 *Hazard's Pennsylvania Register*, pp. 409, 410, it is said: "And the King, besides his deeds of feoffment given when Duke of York, having, *as far as lay on his part*, granted a *new* patent, (though having passed all the other offices, *it was delayed* at the great seal,) with ample power of government to the proprietor, William Penn, for the whole,—the title to *the soil* (at least) of these counties remained undisputed."

Here, it appears, Penn relied on a patent from James II. when King, which was displayed at the great seal, as the former one also from Charles II. to the Duke, had been.

Chalmers, in his history of the *Revolt of the Colonies*, Vol. I., p. 299, says: "During an unguarded moment, that able politician, Penn, confessed to the Board of Trade, when pressed by these objections, that had James the Second remained two days longer at Whitehall, he would have obtained a grant under the great seal for the three counties on Delaware."

Proud tells us, (*Vol. I., p. 202, note:*) "William Penn, in a letter to some of his friends in Pennsylvania, dated 'England, 10th fourth (June) month, 1691,' (at a time when there was a disagreement in these counties respecting his title,) says, 'I would also you should know *I have* a patent of the lower counties some

years since, *that when there is occasion for it, you may alledge so, but not otherwise.*' ”

The Provincial Assembly of 1704 complain to Penn thus: “And as to the conveniency of the union of the Province [Pennsylvania] and lower counties, [Delaware,] we cannot gainsay it, *if the King had granted thee the government, as the Duke had done the soil; but to our great grief and trouble, we cannot find that thou had any such grant; and if thou had, thou would not produce it, though often requested to do so.*” (*Franklin's Works*, Vol. III., p. 125.)

In 1708, the Assembly of Delaware say they cannot provide for the expenses of the government with cheerfulness, when they look back to these requests in 1700 and 1701, “in relation to Penn's right of government over these three lower counties, to all which we could never receive a satisfactory answer.” “And whereas, the raising of money for the support of Government is an act of the highest nature, and ought to be warranted by the highest authority; therefore they believe it to be their duty, before they proceed to any further business, to address your honor to lay before them the *powers of government* wherewith your honor is invested.”

The Governor replies that it is not worth while to vindicate his authority as he is soon to have a successor. 2 *Pennsylvania Colonial Records*, pp. 424, 425, 426.

Logan, the agent of Penn, in a letter to Henry Goldney, dated Philadelphia, 3d month, (then May,) 1709, to be found in 3d vol. of *Franklin's works*, pp. 573-4-5, says: “Thy Government has consisted of two parts: the Province of Pennsylvania, and the three lower counties on Delaware. To the first, the proprietor has a most clear and undoubted right, *both for soil and government, by the King's letters patent or royal charter; for the latter, he has much less to shew.* For the *soil*, he has deeds of feoffment from the Duke of York, but for the *government*, not so much as is necessary. After his first arrival, however, in these parts, he *prevailed* with the people, both of the Province and those counties, to join in one government *under him*, according

to the powers of the King's charter, *which, nevertheless, extended to the Province only.* \* \* \* Since [the separation of the Province and counties in 1702,] we have had two Assemblies—that of the *Province*, acting by a *safe and indisputed* power; but that of the other counties, without sufficient (I doubt) to justify them. Last fall, the Assembly of those counties took occasion to inquire into their own powers, \* \* and have sent home an address \* \* to obtain powers to some person or other whom the Queen may think fit to discharge all the necessary duties of government over them. This, I doubt, will give the proprietary great trouble; for, when the Council of Trade is fully apprized (as by this means they will be) that those counties are entirely disjoined from the Province, it is probable *they may more strictly inquire into the proprietor's right of government* and legislation with the people there; and it is much to be feared that they may advise the Queen to dispose of the government of those parts some other way."

It appears that, if the grant of Charles II. to Duke of York ever progressed to make it effectual, that it was surrendered.

There is, or was, in existence in 1717, the draft of a grant, dated April 13th, 1683, reciting the surrender of the grant of March 22d, 1682-3; and May 31st, 1683, Lord Baltimore's agent prayed that the draft should not pass into the grant, and this prayer was not disposed of till Charles II.'s death. (*See Chalmers' Colonial Opinions*, 75, 83, 87, 86; *Opinion of Northey and Thompson*, Oct. 21st, 1717; *Opinion 6 on King's Prerogative Abroad*.)

As the counsel for the crown, in the opinion last stated, say,—the great seal having been delayed till November, 1685; the great seal of James II. could not have been affixed to a grant of Charles II. after Charles' death in the February preceding; nor could letters patent be issued nine months after that King's death,—as letters patent of King Charles II., nor as letters granted to the Duke of York as such—he then being King.

Charles II.'s seal was probably destroyed in the spring or summer of 1685. Charles II.'s Chancellor, or Lord Keeper Guilford, remained such under James II. until September, 1685,

when he died; and Jeffries was James II.'s Chancellor in November, 1685. Each great seal is destroyed on the demise of the King, and necessarily so, as each great seal is engraved with the reigning sovereign's name. (*See Charles II.'s and James II. great seal, in 4th Vol. Knight's History of England, pp. 241, 381.*)

The two decrees of a competent court, which could and *would* pass upon the *equitable* as well as the legal title, it seems, should be conclusive that the *crown* was entitled to the soil *and government* of the three counties as late as November, 1685, and A. D. 1709.

The refusal of Penn to show his title to the *government*; the pretence of his advocate in 1715, that the title depended upon a grant of James II. (not as Duke, but) as *King* to *Penn*,—which James II. had done all *he* could to make effectual, but which, also, was delayed at the great seal, probably just as he abdicated and fled the kingdom; and Penn's confession that he *would have had* the grant, if the King had delayed two days longer—all are strong proofs that the decrees were, and were considered, conclusive that the supposed grant of Charles II. to the Duke never took effect; and that the title to government and soil, too, remained in the crown.

Though Penn was permitted to remain in possession, yet, from the year 1702, Penn, after many struggles to escape it, signed a *written* declaration every time his Governor was approved by the King, that the approbation of the King of the Governors of *Pennsylvania and of the three lower counties* should not impair the claim of the crown to the *government and soil of the three lower counties*.

This declaration was repeated for certainly seventy years.

Breviat, p. 109,  
in Philadelphia  
Library, No. 1624

This is admitted in 1750, in the *Breviat* of Penn's counsel, in the suit of *Penn v. Lord Baltimore*, to have been done from 1702 till that time; but his counsel say it was so in every colony, by virtue of a statute of Ann.

The truth is, there is no such reservation in any other case. The Governors were required to be approved by statute 7 and 8,



*William III.*, ch. 22, § 16, *A. D.* 1696, and not by an act in Queen Ann's time.

These decrees, Penn's reluctance to show his title, his counsel in 1715 claiming under a patent of James II., and not Charles II., his and his heirs' repeated written declarations, and the continual claim of the crown during five reigns, make a strong case against the existence of any grant by Charles II.

The Delaware statute of 1775, (1 *Booth's Laws*, pp. 567, 569,) untruly recites the proclamation of George III. in January, 1769. The King's proclamation expressly reserves the right of the crown *to the soil and government* of the three counties, and only ratifies the agreement so far forth as relates to the dispute of Penn and Baltimore "between themselves."

I have a copy of the whole proclamation. Superadd to all these decrees, writings, reservations and facts,—the acknowledgment by Delaware in 1794, that the crown at the Revolution owned the three counties, and was entitled to the government thereof, and her claim that thus by the Revolution of 1776 she derived the title to the vacant lands,—and the weight of the evidence against the grant of Charles II. to the Duke becomes overwhelming. (*See Act of 1794, in 2 Booth's Laws*, pp. 1174, 1175.)

Mr. Sergeant rejected this act of 1794, as any *estoppel* against Delaware; but the *recitals* in this act *seem to be true*,—and are proved to be true by the other powerful evidence before stated.

If such grant of Charles II. to Duke, March 22d, 1682-3, is now shown, what is *it* against two *decrees*—one in 1685, and one in 1709—that the crown yet held the title to the land and the government of the three counties.

There may be a record of the grant; but is there any record of the great seal being annexed to it as an original paper?

The decree of Lord Hardwick in 1750, is to be found in *Pennsylvania Archives*, 1760 to 1776, Vol. IV., p. 13.

His decree expressly reserved rights of crown. I think it does not appear that Attorney-General ever in fact appeared to the suit.

In the *Breviat* of Penn's counsel, they say they have the grant of Charles II. to Duke ready to show, but it does not appear to have been put in evidence at all.

There have been two investigations of the title to Pea Patch Island, which is in the Delaware river, within the supposed twelve-mile eirele—one in the Circuit Court of U. S. for New Jersey, before Judge Baldwin, in November Term, 1836; the other, before John Sergeant, as Arbitrator, in 1847 and 1848.

The ease before Judge Baldwin was between Gales, lessee, plaintiff, and Edward Belinge, an engineer of the United States, in possession under the United States, defendant. (*See Governor Bibb's Argument before Mr. Sergeant, Senate Executive Documents, No. 21, XXXth Congress, first Session, A. D. 1848.*)

The result was, a verdict and judgment against Belinge, November Term, 1836. (*See a history of the case with Judge Baldwin's charge in Senate Documents, No. 140, XXVth Congress, second Session, A. D. 1838.*)



The case before John Sergeant was between James Humphrey and the United States.

Humphrey claimed under a sale to Hudson, under a judgment and execution out of Supreme Court of New Jersey, against Gale, and a deed from Hudson. (*See Ex. Doc. No. 21, above p. 51.*)

The arbitration was under an agreement between Marcy, Secretary of War, and Humphrey, dated February 27th, 1847. The agreement is set out in full, in *Ex. Doc. No. 21, pp. 4, 5, 6, 7.*

By this it was agreed that Sergeant should "decide the question of title to the said Pea Patch Island, as derived by the United States from Delaware; and by the said James Humphrey claiming through the said Henry Gale, deceased, from the State of New Jersey; and his decision and award made in writing shall be final and conclusive between the United States and the said James Humphrey, claiming under the said Henry Gale, deceased."

Humphrey agreed to leave a deed to United States in escrow, to be delivered, if decision in favor of United States. If award against the United States, there was to be a valuation of the island, and when paid, deed to take effect.

The result of this arbitration was in favor of the title of the United States under Delaware.

In the first case, in 1836, Judge Baldwin charged the jury: that Delaware had never been granted by the crown, and remained as part of the royal domain: that Pennsylvania had no title but such as the Duke of York had; and that he had none: that the Duke's two deeds to Penn of 24th August, 1682, purported to grant the twelve-mile circle, and by the words "*royalties*," and "*seignories*," the power of government.

The truth is, the word "*seignories*" is not contained in the deed.

He also charged that the act of union in 1682, between Penn-

sylvania and the three lower counties, (Delaware,) recited that the Duke acquired the counties by conquest; but as a subject could not acquire such title, the title vested in the crown, and cited *Chalmer's Colonial Opinions*: that the deeds alone passed neither soil nor jurisdiction: that they did not, in intendment of law, even, purport to pass more than a tract of "land" on the Delaware; therefore, that the bounds of the grant must be on the bank, and not follow the line of a circle into the river: that the habendum is only of "the town and circle of twelve miles of land about the same islands, and all other the before-mentioned or intended to be hereby bargained premises:" that the only part of the river conveyed was that west of a line drawn between the two points where the two ends of the circular line touched the river.

The omission of the word "river," in the habendum and covenants, he thought, aided the construction. He thought that in no event could the deeds be construed to intend a grant of any more of the river than to its main channel. He suggests that, as the island was not in existence in 1682, it might have been part of Jersey main land then. If bare at low water in 1664, and part of Jersey shore, it was yet in New Jersey; if under water always, prior to Revolution, it belonged to King. Though the title purported to be conveyed by the Duke's deeds was not valid originally, it became valid by acquiescence of the crown in Penn's long possession of the government from 1682 to 1776. (*But, as we have seen, the crown did not acquiesce.*)

That there was every evidence, short of letters patent, of Penn's title to the three lower counties. He instructed the jury to take it as proved, that the King had approved and confirmed the Duke's deeds to Penn, but that, as to boundaries, they could go only as far as possession had been had, or acts of ownership or jurisdiction exercised.

Says there is no evidence of possession of Pea Patch Island, or any jurisdiction exerted till 1813, when Delaware ceded it to United States.

The title must depend upon the acts of approbation and confirmation of the crown.

An uninterrupted enjoyment of a right of government will give rise to the presumption of an original grant or confirmation.

That islands in Delaware have been surveyed by West Jersey

proprieters since 1739, at least. (This was after government surrendered, and therefore could not be assertion of *governmental* right. Delaware alleged all these were north of circle.)

He said it is matter of judicial knowledge, that New Jersey has enjoyed rights of fishing in Delaware. Laws of New Jersey regulated rights of fishing in Delaware. [The only right New Jersey Legislature, prior to Revolution, had to do this as to Delaware river, must have been the grant of right to fish if river was in crown.]

Penn claimed right to islands in Delaware, and it was recognized. (*Cites 12 S. and R. 209, 210.*)

Rights of Delaware are perfect to the extent of exercise of jurisdiction or acts of legislation; both being the foundation of prescription. No pretence that Penn exercised any jurisdiction beyond the middle of the river. The adverse claim of the New Jersey proprietors, by making grants, though they had no right to government, would bar any prescription of Penn.

At Revolution, States did not become *proprieters*. In 1784 a survey of West Jersey proprietors vested title in Hall, under whom Gale claimed. Hall and Gale had possession from 1784 to 1815, when dispossessed by United States. 'Thirty-one years' possession was good title. Delaware had an election to consider herself as succeeding to the rights of the *proprietaries* of the three counties, or to the rights of crown—

[*i. e.*, proprietaries had title by possession against crown, and State could succeed to that; or, having conquered the territory from the crown, if it was proprietor, stand on that.]

This election was made eighteen years after Revolution; and in 1794, when Delaware repudiated any claim under Penn. Delaware then, by act, recited that the crown having *claimed* the soil of the State, and the crown having relinquished its rights, proprietary and territorial in the United States to its citizens, by *virtue* of this relinquishment, the soil and lands became the rights of the citizens of Delaware, who have power to dispose of it; and the claims of the former pretended proprietaries are not founded in law or equity.

This election he held to preclude Delaware from standing on the Penn title by prescription; that as the State rested its title

on the treaty with England, she can have no better right than the King.

The renunciation of the title of Penn put both States on equal footing. The King had title to the river and the two States at the Revolution, took title to the middle of the river.

Gen. Wall's brief (he then being U. S. District Attorney) is at page 25 to 34, *Ex. Doc., Senate, No. 140, A. D. 1838.*

He places the right of New Jersey on the absence of the title derived from the crown to the Delaware river in either State, and that by the Revolution each went to middle of river.

Sergeant admits the conclusion, if neither had title. (*See Ex. Doc., No. 21, A. D. 1845, pp. 230-1.*)

*Ex. Doc., Senate, A. D. 1848, No. 21, p. 234.*

Mr. Sergeant, in 1848, places the title of the State of Delaware upon the fact—

1st. That the Duke of York made the grant to Penn, though without title, and that thereby the three counties became a Province or Colony, and acquired a name or identity, with the boundaries given by the deeds.

2d. That the act of union of Pennsylvania and the three counties, 7th December, 1682, was, "of course," submitted to the King in Council and approved. [This he *assumes*, entirely.]

3d. That the crown *thereby* assented to the act of union, and thus acknowledged the validity and legal operation of the two deeds to Penn from the Duke of York, the boundaries defined in them, the possession and right of possession according to those boundaries, and the rightful exercise of the powers of government under them.

4th. An existing Colony was thus acknowledged as rightfully created and lawfully enjoying the powers and privileges of a Colony by known and settled boundaries; and this acknowledgment was by all who had an interest.

5th. That neither Pennsylvania, New Jersey, nor the Duke of York had title.

6th. The crown alone could object, and the crown assented.

7th. The crown never retracted its assent, nor intimated any disposition to do so.

8th. That, March 22d, 1682-3, Charles II. granted to the Duke the same premises which, in August, 1682, seven months before, the Duke had conveyed to Penn.

9th. The original patent was produced before Sergeant, (he says,) p. 235; but *see record of the evidence*, pp. 8, 9; an exemplification of this patent under great seal 16th July, 1843; a printed copy, said to be in Franklin and Hall's edition, in 1754, of proceedings of Pennsylvania Legislature, Vol. III., p. 590. (See p. 19 and 18 of *Ex. Doc.*, No. 21; a sworn copy under seal of Mayor of London, dated February 4th, 1735, made from letters patent in Penn's possession. The original was offered to be produced in 1735, in *Penn v. Baltimore*.)

10th. The foundation of the new Province on the basis of the deeds from the Duke, the exercise of legislative power, the declaration of allegiance at Newcastle, and the union with Pennsylvania, were all approved by the crown. [This is all assumed.]

11th. In 1685 the King in council, to whom the jurisdiction belonged, decided against Baltimore title. [And Penn's too, adjudging title in crown, two years after the alleged patent to the Duke.]

12th. Penn removed from the government of Pennsylvania by King William, in 1692. No question about title then. Penn restored by King in 1694.

13th. January, 1711-12, Penn's title was gone into by Attorney-General, with a view to his surrender of the Government, and held made out.

14th. June, 1717, Earl of Sutherland applied for grant of the three lower counties. No letters patent from crown to Duke then shown, because Penn was under a lunacy. The Attorney

and Solicitor-General advise no grant without establishing crown's title in chancery.

15th. The title passed undisturbed by the crown through five reigns and a revolution, and the Province continued as it was founded in 1682; though always in view of the English authorities, and frequently since subjected to the examination of the King's advisers.

16th. June, 1735, Penn's suit against Lord Baltimore, decree against Baltimore, and liberty given to *either party* to apply, if the execution of the decree was interrupted by any act or right of the crown; and liberty never used.

Crown did not interpose its right, nor do any act. [Reason was, *this* decree in no wise affected the crown's right to the three counties. This decree relates only to northern and western boundary, and Penn and his heirs had for above thirty years before, whenever he or they appointed a Governor, been required to sign a paper that the crown's act in approving his Governor should not prejudice crown's right to three counties.]

pp. 238-9.

17th. The Duke was estopped.

18th. The Duke was trustee of Penn when he got the supposed grant in 1683, and therefore Penn, and so Delaware, has *equitable* title, which was just as good by the agreement submitting the question to Sergeant.

19th. Decree of Lord Hardwick in 1750 settled the *validity* and legal sufficiency of the deeds, the right of the Province under them, and of course its boundaries. [It really settled only northern and western boundaries.]

20th. Decree universally acquiesced in, and became the law of the land till the Revolution of 1776. Neither party ever applied to set up any act or right of the crown.

21st. Twenty-four years more elapsed, from 1750 to 1774, without a question of boundary, when first Congress assembled. The boundaries were acknowledged by the crown—the crown, in truth, never having disputed them.



22*d.* Such as this Province of the three lower counties was under the crown of England, she was acknowledged to be, by being received into Congress of 1774. p. 240.

23*d.* The boundaries of the three lower counties had never been questioned by the crown from the beginning.

[It is not a mere question of what the boundary *was*, but what it *is*; and this is to be determined by what the *jurisdiction* was; not what the boundary *was*. The crown denied the rightful power of Penn to govern, and reserved its right. Penn, many times under his hand, agreed its acts should not prejudice its right.]

24*th.* New Jersey has no controversy with Delaware as to the boundary.

25*th.* There was no outstanding royal claim which, according to Martin and Waddell, would have vested in the new sovereignty at the Revolution. p. 241.

26*th.* From these considerations, if the King had not conveyed to the Duke, it would be difficult to prove that Delaware's limits were not determined by the boundaries in the deeds—unless they interfered with some superior and better right.

27*th.* A Colony without any deed, under like circumstances, would, if there were any authentic documents to prove her boundaries, be entitled to stand on the boundaries.

28*th.* All arguments against Delaware's right to the river go too far. They take away right to the *land* of the State, for it is alleged the three counties belonged to Lord Baltimore. p. 241.

[This is not so; for the existence of the river between the two States halves that, but not the land.]

29*th.* The right between Penn and Baltimore was decided by King in Council, 1685, by fixing the present line.

[This is all wrong. The council determined it to be the King's—not Penn's. The question of the boundary of the three counties was not up, but the eastern boundary of Maryland.]

30th. The original right has never been open since.

[Yes, it has. The crown, as late as 1769, claimed the right to the three lower counties.]

31st. The right of Penn as against crown, was long ago settled and decided in England.

[But decision in 1685 was in favor of the King against Baltimore, and Penn advocated in person the King's right. Lord Hardwick's decree, in 1750, expressly reserved right of crown.]

32d. The patent of Charles II., in 1683, to Duke, authenticated the boundaries of the three lower counties.

33d. So did the decree in council, in 1685.

34th. So did Lord Hardwick's, in 1750.

35th. The boundaries never underwent a change from the beginning.

[This is immaterial. It is no consequence what the boundaries *were*; the question is, what are the boundaries *now*? If Penn had not such title to the *government* as was good against the crown—the boundaries *now* must be different from what they were of old; for the Revolution of 1776 would divest the *rightful* title of the crown, and halve the river, and vest that rightful title in the two conquering sovereignties,—no matter what, *in fact*, had been the colonial boundaries under Penn's defeasible claim. Therefore the question as to former times is not one of actual boundary, but of *governmental right*. If the crown denied the right of Penn to the government throughout; and reserved it; and Penn assented to the reservation under his hand;—what the boundaries of an invalid deed, and a deed which gave *no power of government at all*, and which could not estop even the Duke's claim to the government—is immaterial to the question of jurisdiction of *old*, which settles what the boundary is *now*.

If the power of government was in the Duke, and not conveyed by his deeds, as it was not, it entitles New Jersey to middle of river, same as if King had the river.]

36th. The terms used in the Duke's deeds are the same as used



to convey navigable rivers to the Duke—to Lord Berkeley and Sir George Carteret, and from them to New Jersey proprietaries.

37th. Not unreasonable to think grant of river was intended, *reserving only the public rights—navigation, for instance—which* were free and common to every subject, and *now* are common to every citizen.

38th. Has Delaware, by any act or default of her own, parted with right she had? If she has, it must be as a sovereign parts with his right to his territory. It would be legitimate to allege anything to show her right in one State or another: but if her boundaries are conceded, argument is at end—there must be a grant. If there was a dispute as to boundary, the State might settle it; but, admit the boundary, and there is no dispute to settle. Delaware's act of 1794 did not grant New Jersey the territory; nor did it settle boundary.

[It did settle the boundary, if the *facts* recited in the act of 1794 are true. The boundary depended (as Mr. Sergeant admits, *pp.* 230, 231,) on the *fact* whether the crown owned the river in 1776. The act of 1794 admitted that the crown *did* own it.]

39th. Case been argued as if title to Pea Patch depended on boundary of State.

40th. The decision of Judge Baldwin, in Circuit Court U. S., and of Delaware Circuit Court, by default, both necessary to be disregarded; for the very question to be determined is the jurisdiction of one court or the other over the question.

41st. Governor Bloomfield, of New Jersey, negotiated the cession of Pea Patch Island from Delaware to United States.

42d. Reedy Island is conceded to be Delaware's; yet, if while Delaware was a Province, the river was in the crown, Delaware could have no right to Reedy Island.

[He seems to say this island was in possession of Delaware prior to Revolution of 1776.]

43d. New Jersey, even in granting to Gale, asserted no title to Pea Patch.

44th. Not a single instance of jurisdiction, by New Jersey, over Pea Patch. The suit in Circuit Court U. S., New Jersey, is no evidence. It was after controversy arose, and to determine it.

p. 249.

45th. Delaware asserted, and exercised jurisdiction over river and islands habitually. This is conclusive evidence.

46th. Cites evidence of Chief Justice of Delaware and eleven others as to exercise of jurisdiction.

47th. New Jersey, in 1709, established boundaries of her counties west of Delaware. Her act of 1822 was after controversy arose.

48th. Concludes Pea Patch was in Delaware.

#### REPLY TO THE POINTS UPON WHICH MR. SERGEANT PLACES THE RIGHT OF DELAWARE TO THE PEA PATCH ISLAND.

1st. That the counties, by the Duke's grant, became, *de facto*, a Province or Colony; and acquired a name or identity, with the boundaries given by the deeds of the Duke.

(a.) The boundaries do not include the Delaware river, except a cove. (*See Humphrey's line in map in 1 Wallace C. C. R. Appendix, and the discussion of the boundaries hereinbefore contained.*)

(b.) It was *not* a Province, *de facto*, in any *known* sense of that phrase. Every government, *de jure*, which exercises its power, is a government *in fact*; but is never called a government *de facto*. Delaware's Governors were approved by the *crown* from 1702 to 1776, under the repeated written declarations of Penn and his heirs given to the crown, that such approval should not impair right of crown to government or soil.

In the true sense of Mr. Sergeant's proposition, a government, *de facto*, is one which is *not de jure*. This government was confessedly not granted, and therefore not *de jure*; but being permitted under reservation of the crown's right, though *quasi de jure*, as long as permission lasted, it was not *de facto*, as distinguished from *de jure*. Besides the written declarations,—we have crown's reservation as late as January 11th, 1769.

When one exercises the powers of government, in fact, (not *de facto*), by express permission of him who turns out to have had the title *de jure*, who, however, reserved his own right,—the exercise of power which has taken place must be referred and attributed to the best title; which was the permission of him who had the title *de jure*.

The *de jure* title of the crown appears by the decrees of 1685 and 1709; and it was reserved by the written declarations of Penn; and the proclamation of January 11th, 1769.

The act of Delaware of 1794, though not an estoppel, is the strongest possible evidence. Estoppel is conclusive. This evidence is strong, though not conclusive. It destroys the right to act on a *de facto* basis; it acknowledges the *right*; it states who had the government *de jure*. It is a moral estoppel, and that ought to be enough between sovereigns.

(c.) There can be no title by prescription between sovereigns founded on a *de facto* government, where continual claim is kept up. (*See Vattel's Law of Nations*, p. 190, §§ 143, 144, 145.)

So that a *de facto* government, if it existed, is immaterial whenever there is a continual claim.

As against Penn's title to the government, this continual claim is all that was necessary. As to purchasers of *land* from him, there ought to be more than continual claim.

The title, by prescription alleged, is against the crown. The State of New Jersey claims one-half of the river, under the crown. An acknowledgment by Delaware, in solemn form, as by *Statute of 1794*, disposes of right under *de facto* title; for it is a solemn public declaration by one of two claiming under the same title which the other has a right to the benefit of. There is a privity between the crown and New Jersey and Delaware. New Jersey and Delaware have each one-half of the title of the crown, whatever it was. Delaware's acknowledgment of the crown's title, would be estoppel in favor of the crown and against Penn's exercise of power *in fact*, being considered an exercise of a power technically *de facto*.

The Penns, in 1792-3-4, claimed the vacant land in Delaware. Chief Justice McKean and Edmund Physic were Penn's agents, and made a "calm appeal to the People of the State of Delaware," claiming title to the vacant lands.

This "calm appeal" is in Philadelphia library, No. 12,278, *duodecimo*. The power of Penns to McKean and Physic is on record at New Castle, and dated July 7th, 1781. On the 17th August, 1792, McKean and Physic advertised notice in the *Delaware Gazette* that they would sell vacant lands for £5 per one hundred acres. Resolutions of Delaware Legislature of 1792 and 1793, are set out in "calm appeal." (*See 2 Booth's Laws, pp. 1077-8, 1160.*)

The date of the supposed letters from Charles II. to the Duke, March 22d, 1682, is assumed in the "calm appeal" to be *before* August 24th, 1682; whereas it was *after*, as March 22d, 1682, was *last* of year 1682, (*old style*.)

2d. That the act of union of Pennsylvania and three lower counties was submitted to King in Council, "*of course*," and approved.

(a.) This is not to be admitted. There is much evidence that it never was so submitted. There are records to show the union was considered illegal within a few years after 1682. It was repudiated by three counties, and their separation from Pennsylvania must have been illegal, if union approved by crown. The separation was never objected to, but the union was; both in three lower counties and in England. (*See Quarry's letters.*)

3d. That, by approving union, crown acknowledged—

I. Validity and legal operation of feoffments of Duke to Penn.

II. The boundaries defined in the deed.

III. The possession and right of possession of Penn, according to the boundaries.

IV. The rightful exercise of the powers of government.

(a.) This third proposition cannot be admitted as a *fact*, for crown did not approve the union act.

(b.) The approval, if it had been given, would not have these effects stated, for the decrees of 1685 and 1709 overthrew all such effect.

(c.) Penn's solemn written admissions that crown claimed the soil and government, avoid the effect of the union act. It was a mere temporary expedient, if union approved.

(d.) The boundaries in the deed do not include any more of the river than a cove. (*See Humphrey's line on map in 1 Wallace C. C. R. Appendix and the discussion of boundaries hereinbefore contained.*)

(e.) If union act being approved had such effect, Penn's written declaration avoided it, and reinstated the matter as it stood before approval of union act. Penn's declarations were given after separation.

(f.) If boundaries were acknowledged by union act, then the separation, the decrees of 1685 and 1709, Penn's written declarations from 1702 to 1776, crown's reservations in proclamation of 1769,—all show crown claimed the title and government; and the claim of crown thus made enures to New Jersey's benefit; for, if crown's right in river existed—as the decrees, the declara-

tions and proclamations show—New Jersey has title to middle of river. In this respect the definiteness of the boundaries aids New Jersey. It shows the extent of *crown's* claim to the river which is public property, and must go with the governmental powers. When decrees of 1685 and 1709, and Penn's declarations and King's proclamations are shown, the definite thing claimed by the crown and decreed to crown is made manifest. The crown claimed *all* of three lower counties, and so the river, if the river was included by the description in feoffments.

(*g.*) The rightful exercise of power to Penn was denied by the crown down to 1776, and Penn admitted it was denied.

4th. That thus an existing Colony was acknowledged as rightfully created.

(*a.*) *Contra* decrees of 1685 and 1709; Penn's repeated declarations in writing; crown's proclamation of 1769; Delaware's legislation, 1792 to 1794.

(*b.*) There was no acknowledgment by crown, but continual claim to 1776.

5th. That neither Pennsylvania, New Jersey nor Duke of York had title. [Admitted.]

6th. Crown alone could object, and did not; it assented.

(*a.*) Crown did object.

1. Decree of 1685.
2. Decree of 1709.
3. Lower counties objected, and demanded a show of title, which was refused.
4. Proclamation of 1769.
5. Penn's written declarations from 1702 to 1776.

7th. Crown never retracted its assent, nor intimated any disposition to do so.

(*a.*) See last above.

8th. That Charles II. granted in 1682-3, and Duke before had conveyed to Penn.

(a.) Both of these propositions are denied. Charles II. never granted either soil or government.

(b.) Duke of York never granted *government* to Penn. King James II., doubtless, did attempt to grant it; but fled before great seal attached. (*See 5th Vol. Hazard's Pennsylvania Register*, 410; 1 *Chalmers' Revolt of Colonies*, p. 299.)

9th. That original of Charles II.'s letters were produced before Mr. Sergeant.

(a.) Very doubtful. (*See p. 8 of Ex. Doc., No. 21, A. D. 1848.*)

(b.) If produced, no great seal pretended.

(c.) It was surrendered. (*Chalmers' Opinions*, 73.)

10th. Foundation of Province; exercise of legislative power; union with Pennsylvania approved by crown.

(a.) All denied. (*See above 6th.*)

11th. The King and Council had jurisdiction to make decree of 1685, which decided against Baltimore's claim.

(a.) Jurisdiction is admitted, but the statement of what decree was is denied. The three lower counties were declared to belong to crown, not to Baltimore, and not to Penn, either. Lord Hardwick, in 1 *Vesey, Sen'r*, says the Privy Council had the jurisdiction to settle the boundaries.

12th. Removal of Penn by William and Mary; no question about title then; restoration of government to Penn in 1694.

(a.) Removal surely was questioning his title.

(b.) Restoration in 1694 was a mere temporary expedient, and Penn's subsequent written declarations and King's continual claim till 1776, destroyed effect of restoration; but the documents accompanying removal and restoration are not produced.



13th. In 1711-12 Penn's title examined, and reported good by Attorney-General.

(a.) This weighs nothing, considering that object was to see if Penn had anything to surrender. He certainly had Pennsylvania and, perhaps, *soil* of three counties.

14th. In 1717, report suggesting examination of crown's title in Chancery.

(a.) This report is full evidence that Charles II. never granted twelve-mile circle, or, if he did, that it was surrendered. (*Chalmers' Col. Opinions*, 73.)

15th. Title passed undisputed by crown through five reigns and a revolution, and Province continued as it was in 1682, though always in view of the English authorities, and examined by King's advisers.

(a.) This is all denied. (*See 6th above.*)

16th. In 1735, Penn's suit against Lord Baltimore; decree against B.; liberty to either party to apply, if execution of decree interrupted by any act or right of crown; and liberty never used; crown did not interpose.

(a.) See proclamation of crown in 1769.

(b.) Also decree itself, reserving crown's right.

(c.) Penn's and his heirs' subsequent written declarations, down to 1776, that crown's right was not impaired.

(d.) The decree related only to *northern* and *western* boundary—not to the eastern.

17th. Duke was estopped.

(a.) Certainly not as to right of government; for that his deeds of feoffment did not pretend to convey.

(b.) But if the Duke had, *as* Duke, conveyed the soil and powers of government, which as King he afterwards acquired; though he would be estopped as King from claiming the property, he could not be estopped from claiming the *government*, which he as King acquired only *sub modo*—i. e., as *trustee* for his subjects. A warranty by one who afterwards becomes vested



as trustee with the title he has warranted, will not estop him in his character of trustee, for then it would estop the *cestui que trust*.

18th. Decree of 1750 settled right of Province and boundaries.

(a.) It expressly reserved right of crown.

(b.) It settled only northern and western boundaries.

19th. Decree of 1750 universally acquiesced in till 1776.

(a.) Crown proclamation of 1769 mis-recited in Delaware act of 1775. Crown did not acquiesce, but expressly reserved its right. (See also above 6th.)

20th. From 1750 to 1774, acquiescence in boundary till first Congress. Crown never disputed boundaries.

(a.) Proclamation of 1769 intervened.

(b.) Penn's heirs' written declarations were repeated.

(c.) Crown always disputed title to any part of the boundaries—*i. e.*, the right of Penn to the power of government. *That* being disputed, and Penn assenting to the *right* being re-asserted at any time, over the whole he occupied, it is immaterial that the crown did not dispute the right to any particular part of the boundaries.

21st. Such as Delaware was under the crown, she was acknowledged by first Congress.

(a.) This might be admitted; for, under the crown, she was *not* acknowledged as a government existing, except by temporary sufferance; but as belonging, really, soil and government, to the crown directly, without any rightful jurisdiction or boundary,—unorganized and unbounded.

(b.) Did New Jersey, by consenting to the admission of Delaware as a Colony, acknowledge her boundary, or give up any right she there might have insisted upon? Did she waive any right, by not asserting it against Delaware, when all were uniting to preserve their liberties as *men*?

22d. The boundaries of the three lower counties *had never been questioned* by the crown from the beginning.

(a.) But, so far as the present controversy is concerned, the crown questioned something more important than the boundaries. If the crown was right, New Jersey's claim to river stands on

solid foundation, by virtue of Revolution of 1776. The crown questioned the right of *government*, certainly from 1685. Penn, certainly from 1702, *admitted it was questioned*, and agreed that the right should be asserted whenever the crown thought proper.

(*b.*) It is not a mere question of boundary ; but of *any* jurisdiction, within *any* boundaries by Penn which could be transmitted to Delaware as against the crown. If there was no rightful jurisdiction at all over the three counties, and the right to assert the claim of the crown whenever it was found convenient, was reserved, (as it was,) and it appears now that the crown *had* the jurisdiction ;—it is immaterial to the question of governmental right over the three counties, what the boundaries of the three counties were ; for whatever they were, all within the boundaries were not Penn's, but the crown's. If the crown had the *right*, Penn had assented to its being asserted at any time ; and the *de facto* existence of his government any length of time, over whatever boundaries or to whatever extent, could not ripen into a right against the crown ; for by common consent the crown's right was to be exerted whenever the crown chose.

24th. New Jersey has no controversy with Delaware as to boundary.

(*a.*) Now, she has.

25th. There was no *outstanding* royal claim which, under Martin and Waddell, would have vested in the new sovereignty at the Revolution.

(*a.*) This is not true, and never can be asserted so long as there exist the decree of 1685 ; the decree of 1709 ; Lord Hardwick's reservation in his decree of 1750 ; Penn and his heirs' repeated written declarations in writing, from 1702 to 1776 ; the proclamation of 1769.

(*b.*) No grant by Charles II. to Duke's son took effect ; or if it did, it was surrendered.

26th. From these considerations—if the King had not granted to the Duke—it would be difficult to prove that Delaware's

limits were not determined by the boundaries in the deeds, unless they interfered with some supreme and better right.

(a.) It is immaterial whether her limits were determined or not. Though the question *now* at issue is one of boundary; *that* is to be determined by who had the right of *government*—the crown or Penn. If Penn had any right, it was by contract between crown and Penn to be defeasible by the crown at any time. He was lessee at will, and prescription runs not in favor of such a holder. Did Delaware belong to the crown or not, is the question. The crown claimed her certainly from 1702. Penn consented to leave the question open. Delaware, by her legislation, 1792-3-4, admitted she had belonged to the crown till 1776. Whatever her boundaries *were* is immaterial. The question is, what *are* her boundaries *now*? This does not depend on what her boundaries *were*; but upon the question, *to whom* did the power of *government* belong. The main fact is whether crown could have claimed the government of her, if there had been no Revolution of 1776. If the crown could, New Jersey goes to middle of river.

This does not prove too much, as Sergeant says; for a *royalty*—a river stands on very different ground from the *land* which was inhabited and cultivated. The land is private in its nature—the river is always public. The land can be held in possession as *property*; river cannot. Though land is corporeal, the *government* over the land is an incorporeal royalty; the river is a corporeal royalty; and should be held as such or not at all.

(b.) The deeds ought not to determine the boundary on that which is not a subject of *private* property. The deeds were for private *property*, and ought not to determine *jurisdiction* over that which is not a subject of *private* property. The boundary of a deed often determines extent of possession and of *claim* to private property. But it ought not to determine boundary or jurisdiction—no jurisdiction at all being granted.

(c.) Permitting the boundaries of the private property granted to determine the boundary of *jurisdiction*, *would* interfere with “the superior and better right” of crown; which Penn

admitted was claimed by crown, and under which he held *de facto* by permission until the *right* should be determined.

27th. A Colony *without any deed* would, under the other circumstances—if there were any documents to prove her boundaries—be entitled to stand on the boundaries.

(a.) Surely not as against the rightful claimant of the Colony, whose *right*, it was agreed should be asserted when convenient—nor as against any one claiming under that right.

28th. All arguments against Delaware's right to Pea Patch, in land, go too far.

It would deprive her of vacant land and jurisdiction over all her land and territory.

(a.) On the contrary, Delaware puts her right to vacant land upon right of crown to *it*—and thus legitimately derives title, and without it could not claim it.

(b.) The argument that crown owned government and land, would give the *whole* of *both* to Delaware, except the *river*. Thus Delaware claimed both government and land in 1792–3–4; but from the nature of part of the subject to which she claims title under the crown—the *river*—and from adjacency of New Jersey—another sovereign; she can have but *half* of *that*.

29th. The right between *Penn* and Baltimore was fixed by decree of 1685.

(a.) This the text of the decree will show is not so.

30th. The original right has never been open since.

(a.) Untrue; decree of 1709. Reservation in Lord Hardwick's decree in 1750; Penn's written declaration to crown from 1702 to 1776; proclamation of crown, 1769.

31st. Right of Penn as against crown long ago decided in England.

(a.) Entirely untrue; see No. 30.

32d. The patent of Charles II. in 1683 to Duke, authenticated the boundaries of the three lower counties.

(a.) But this is nothing, if decree of 1685 held Penn had nothing after that patent and that Delaware was crown's.

The question is not simply what boundary of three lower counties *was*, but who had the government of them. The question is one as to "who," not as to "what." If crown had the government; then the river is to be divided—though the crown's boundary came up to eastern shore of river, and to low water mark on Jersey side. The decree of 1709; Penn's written declaration from 1702 to 1776; the proclamation of 1769, all show Penn acquired no prescriptive right. The decree of 1685 proves he acquired no right under the pretended letters patent of Charles II. in 1683.

33d. Answer as last.

34th. " " " and No. 30.

35th. Boundaries never underwent a change from beginning.

(a.) There were no *jurisdictional* boundaries in deeds of feoffment. Charles II.'s letters patent are disposed of by decrees of 1685, and 1709, and 1750. Penn's declarations and proclamation of crown in 1769, show there were no *jurisdictional* boundaries—which New Jersey claiming under crown by Revolution—is prevented from disputing.

If Penn did not own, but Duke did, it is just as effectual for New Jersey to extend her title to middle of river.

36th. Terms used in Duke's deeds same as used to convey navigable river to Duke in the other letters patent.

(a.) Not so; for the grant of *power of government* passes the river—soil may possibly pass by words describing it—but jurisdiction over it will not pass by any words, except those conveying power of government.

37th. Not unreasonable to think grant of Penn was intended

to include river—*reserving* only the public rights—navigation, for instance—which were free and common to every subject.

(a.) If such reservation implied, it gives New Jersey's citizens the right to the disputed right of fishing, on equal terms with Delaware's citizens—and so disposes of whole dispute.

(b.) It is unreasonable to suppose that *all* river was intended to pass; for the construction contended for would give river, throughout its course, all the way between New Jersey and Delaware.

See other considerations suggested where boundaries of deeds described, *ante*

Penn and Logan Correspondence, 347, published in 1870.

Another fact. Penn owned land in Salem city itself, which would have been covered by deeds, if a complete circle were described by feoffment.

38th. Delaware has not parted with any right she had. If she had she would have done it as a sovereign parts with it.

If *boundaries* are conceded arguments are at an end.

If there were *dispute* about boundary, Delaware might have *settled* that dispute.

If there was no dispute there was nothing to settle.

Act of 1794 did not grant New Jersey the territory nor settle a boundary.

(a.) The State of Delaware's right was *acquired* by Revolution of 1776, either from Penn or from crown, or both.

She could not acquire the *same* thing from both unless they were both entitled.

But one or the other was entitled, not both. The question is not whether act of 1794 granted anything to New Jersey, or settled any dispute of boundary between the States, but whether the act of 1794 admits a title to the government in the crown and claims under it. If it does, then thereby Delaware admits a fact which determines what the boundary *is*, not what it *was*. The *presumption* is she had no more than she claimed. The unimpeachable presumption must be that she did *not have* the title which she not only did not claim, but declared was not *founded* in law or equity as to the *land*.



The act of 1794 is an admission of a *fact*—no *governmental jurisdiction* by Penn—which, if true, proves Delaware never had any title to the Delaware *river* as a colony ; but which entitles her, as a Revolutionary State, to one-half of it, though she never before owned it ; and also entitles to New Jersey to the other half.

The act is a solemn admission. Delaware did not, in 1794, *claim* that to be true which she now alleges. On the contrary, she claimed that the fact she now alleges as true—that Penn had the soil *and* government—was false, and his claim illegal and inequitable.

It will not do to say that the claim of Penn, in 1794, was illegal and equitable *then*, and not before ; for it could not be divested as to the *vacant* lands by the Revolution. Penn's title to these was a *private* title. The Revolution did not disturb private rights of property. If Penn had the government, *that* was gone by the Revolution ; but if he had the government *and* lands, the lands did not pass by the Revolution, unless they were public lands and he held them as the ruler.

An admission that Penn had not title to the lands in 1794, is an admission that he never had title ; for nothing had occurred to divest it.

(b.) New Jersey does not claim that act of '94 granted anything—but that it acknowledged a fact which shows Delaware had not title and did not claim under ; but disputed and denied, the title of Penn. This fact is now pretty fully established by *decrees* of 1685, 1709, 1750, and reservation of crown's right ; Penn's written declarations and proclamation of crown of 1769, &c.

(c.) The concession that Delaware Colony boundary extended to Jersey shore, does not end the case. It is not true that if the *old* boundaries are admitted that argument is at an end ; but if the boundaries *now*, are admitted it is at an end. But what the boundaries are *now*, does not depend upon what *were* the boundaries, but *in whom* the government was vested. If Delaware was bounded by the *west* side of the river of old, she yet would go to the middle of the river. This shows that what *were* the boundaries is not the question, but *in whom* the powers of

government resided. Though they resided in *fact* in Delaware Colony, by permission of the crown, under whom New Jersey claims, New Jersey can assert the crown's title. The question is, under *whom* did Delaware Colony claim it and hold it, and by what title. If *in name of, and for* crown, New Jersey can claim of Delaware, as crown's trustee, half of the river. That Delaware claimed in name of and for the crown, is shown by act of 1794, by Penn's repeated written declarations that crown should not be prejudiced by approving of her Governor, and by the proclamation of 1769, under which, also, Delaware claims by her statute of 1775.

39th. Case been argued as if it depended on the boundary of State of Delaware.

(a.) Pea Patch being an island and land, it might have been enough to show it within feoffments.

(b.) But showing the river to be within feoffment did not settle the political boundary.

40th. Decision of Judge Baldwin, not competent as evidence.

(a.) This is not sound, though the question to be decided by Sergeant was whether District of New Jersey included place. The question to be controlled by judgment of Baldwin was twofold—the title against United States, established against its officer, and exercise of jurisdiction by a court upon jurisdiction was within New Jersey.

41st. Governor Bloomfield being negotiator.

(a.) Immaterial.

42d. Reedy Island is conceded to be Delaware's; yet if Delaware river was in crown's power to 1776, Delaware could have no title to it before 1776.

(a.) An island stands on different footing from river. River is royalty and public; island is not. Possession would give Delaware the island; but such possession of *river* not possible. Possession of private land, under circumstances before stated of



Penn's written declarations, might give title to it; but would not to a royalty.

43*th*. New Jersey never asserted title.

(*a.*) She does now.

44*th*. Not an instance of jurisdiction exercised by New Jersey.

(*a.*) Then instances must be searched out.

45*th*. Delaware habitually exerted jurisdiction on river.

(*a.*) This is capable of explanation by reason of convenience.

46*th*. Evidence of Chief Justice of Delaware and eleven others.

(*a.*) Should be examined and contradicted.

47*th*. In 1709 New Jersey boundary was west by Delaware river.

(*a.*) If Delaware—*i. e.*, the three counties—was on the west, it would have been so said; but Delaware (the three counties,) was not a boundary of New Jersey on the west in 1709. If the river was the boundary in 1776 of both, the river is to be divided between them.

48*th*. Pea Patch in Delaware.

(*a.*) Deny it.



## APPENDIX.

1680-1—(March 4?) The King granted to Penn—

“All that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delaware river, from twelve miles distance northwards of Newcastle town, unto the 43d degree of northern latitude, if the said river doth extend so far northwards, but if the said river shall not extend so far northward, then, by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the 43d°; the said lands to extend westwards 5 degrees in longitude, to be computed from the said eastern bounds—and the said lands to be bounded on the north by the beginning of the 43d degree of northern latitude; and on the south by a circle drawn at twelve miles distance from Newcastle northwards and westwards unto the beginning of the 40th degree of northern latitude; and then, by a straight line westwards, to the limit of longitude above mentioned.”

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### Feoffments of Duke of York to Penn, and Act of Union.

*The Duke of York's Deed of Feoffment of New-Castle, and twelve miles circle, to William Penn.*

This indenture, made the four and twentieth day of August, in the four and thirtieth year of the reign of our Sovereign Lord Charles the Second, by the grace of God of England, Scotland, France and Ireland, King, defender of the faith, &c. *annoque Domini* One Thousand Six Hundred and Eighty-two, between the most illustrious Prince his Royal Highness James Duke of York and Albany, Earl of Ulster, &c. of the one part, and William Penn, esq. son and heir of Sir William Penn, Knight, deceased, of the other part, witnesseth, That his said Royal Highness, out of a special regard to the memory and many faith-

ful and eminent services heretofore performed by the said Sir William Penn to his said Majesty and Royal Highness; and for the good will which his said Royal Highness hath and beareth to the said William Penn; and for and in consideration of the sum of Ten Shillings to him in hand paid by the said William Penn at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged; and for other good causes and considerations, doth bargain, sell, enfeof and confirm unto the said William Penn, his heirs and assigns for ever, all that the town of New-Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying, and being upon the river Delaware, in America; and all islands in the said river Delaware, and the said river and soil thereof, lying north of the southernmost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging; and all the estate, right, title, interest, powers, property, claim and demand whatsoever of his said Royal Highness, of, in, or to, the same, or any part or parcel thereof; Saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the bargained premises, and every part and parcel thereof; To have and to hold the said town and circle of twelve miles of land about the same, islands, and all other the before mentioned or intended to be hereby bargained premises, with their appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, for ever, yielding and paying therefore yearly and every year unto his said Royal Highness, his heirs and assigns, the sum of Five Shillings of lawful money of England, at the feast of St. Michael the Archangel only. *And* the said William Penn, for himself, his heirs and assigns, doth covenant and grant to and with his said Royal Highness, his heirs and assigns, by these presents, that he the said William Penn, his heirs and assigns, shall and will well and truly pay, or cause to be paid to his said Royal Highness, his heirs and assigns, the said yearly rent of Five Shillings at the days whereon the same is reserved to be paid as aforesaid. *And* his said Royal Highness for himself, his heirs and assigns, doth covenant and grant to and with the said Wil-

liam Penn, his heirs and assigns, by these presents, that his said Royal Highness, his heirs and assigns, will at any time or times hereafter, during the space of seven years next ensuing the date hereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said town and circle of twelve miles of land about the same, and islands, and all other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, for ever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised, or required. *And* his said Royal Highness hath hereby made, constituted and appointed John Moll of New-Castle aforesaid, esq. and Ephraim Harman of New-Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful Attornies; and by these presents doth give and grant unto the said John Moll and Ephraim Harman, his said Attornies, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises herein before mentioned, or intended to be hereby aliened, enfeofed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive. And after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful Attorney or Attornies, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of these presents. *And* his said Royal Highness doth hereby allow of, ratify and confirm whatsoever the said John Moll and Ephraim Harman, his said Attornies, shall lawfully do, or cause to be done in and about the premises, by virtue of these presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof. In witness

whereof his said Royal Highness hath to these presents set his hand and seal, the day and year first above written.

JAMES. [L. s.]

*Scaled and delivered in the presence of*

J. WERDEN,  
GEORGE MANN.

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*The Duke of York's Deed of Feoffment of a tract of land twelve miles south from New-Castle to the Whorekills, to William Penn.*

This indenture, made the four and twentieth day of August, in the four and thirtieth year of the reign of our Sovereign Lord Charles the Second, by the grace of God of England, Scotland, France and Ireland, King, defender of the faith, &c. *annoque Domini* One Thousand Six Hundred and Eighty-two, between the most illustrious Prince his Royal Highness James Duke of York and Albany, Earl of Ulster, &c. of the one part, and William Penn, esq. son and heir of Sir William Penn, Knight, deceased, of the other part, witnesseth, That his said Royal Highness, out of a special regard to the memory and many faithful and eminent services heretofore performed by the said Sir William Penn to his said Majesty and Royal Highness; and for the good will which his said Royal Highness hath and beareth to the said William Penn; and for and in consideration of the sum of Ten Shillings to him in hand paid by the said William Penn at and before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged; and of the rent and covenants herein after reserved and contained, doth bargain, sell, enfeof and confirm unto the said William Penn, his heirs and assigns, for ever, all that tract of land upon Delaware river and bay, beginning twelve miles south from the town of New-Castle, otherwise called Delaware, and extending south to the Whorekills, otherwise called Cape Henlopen, together with free and undisturbed use and passage into and out of all harbours, bays, waters, rivers, isles, and inlets, belonging to, or leading to the same; together with the soil, fields, woods, underwoods, mountains, hills, fens, isles, lakes, rivers, rivulets,

bays and inlets, situate in, or belonging unto, the limits and bounds aforesaid; together with all sorts of minerals; and all the estate, interest, royalties, franchises, powers, privileges and immunities whatsoever of his said Royal Highness therein, or in, or unto any part or parcel thereof: Saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the said bargained premises, and every part and parcel thereof; To have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, for ever, to be holden of his said Royal Highness and his heirs, as of their castle of New-York, in free and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel, yearly, if demanded. And the said William Penn, for himself, his heirs and assigns, doth covenant and agree to and with his said Royal Highness, his heirs and assigns, that he the said William Penn, his heirs or assigns, shall and will, within the space of one year next ensuing the date of these presents, erect, or cause to be erected, and set up, one or more public Office or Offices of Registry in or upon the said bargained premises, wherein he, or they, or some of them, shall and will, amongst other things, truly and faithfully account, set down, and register, all and all manner of rents, and other profits, which he or they, or any of them, shall by any ways or means make, raise, get, or procure, of, in, or out of the said bargained premises, or any part or parcel thereof: And shall and will at the feast of St. Michael the Archangel yearly, and every year, well and truly yield, pay, and deliver, unto his said Royal Highness, his heirs and assigns, one full moiety of all and all manner of rents, issues and profits, as well extrrordinary as ordinary, as shall be made or raised upon, or by reason of, the premises, or any part thereof. And if it shall happen the same shall be behind, and unpaid, in part, or in all by the space of twenty days next after the same ought to be yielded, paid or delivered, that then, and so often, it shall be lawful to and for his said Royal Highness, his heirs and assigns, to enter in and upon the said premises, or any part or parcel thereof, and there to



distrain, and the distress and distresses there taken, to take and detain, until the said moiety and arrears thereof shall be well and truly satisfied and paid, together with all costs and damages for the same. *And* his said Royal Highness for himself, his heirs and assigns, doth covenant and grant to and with the said William Penn, his heirs and assigns, by these presents, that his said Royal Highness, his heirs and assigns, will, at any time or times hereafter, during the space of seven years next ensuing the date hereof, upon the request, and at the cost and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, for ever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised, or required. *And* his said Royal Highness hath hereby made, constituted and appointed John Moll of New-Castle, aforesaid, esq. and Ephraim Harman of New-Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful Attornies; and by these presents doth give and grant unto the said John Moll and Ephraim Harman, his said Attornies, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises herein before mentioned, or intended to be hereby aliened, enfeoffed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to take and receive. *And* after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful Attorney or Attornies, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of these presents. *And* his said Royal Highness doth hereby allow of, ratify and confirm, whatsoever the said John Moll and Ephraim Harman, his said Attornies shall lawfully do, or cause

to be done, in and about the premises, by virtue of these presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof. In witness whereof his said Royal Highness hath to these presents set his hand and seal, the day and year first above written.

JAMES. [L. S.]

*Sealed and delivered in the presence of*

J. WARDEN,  
GEORGE MANN.

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*An ACT of union, for annexing and uniting of the counties of New-Castle, Jones's, and Whorckills, alias New-Dale, to the province of Pennsylvania; and of naturalization of all foreigners, in the said province and counties annexed.*

Since by the good Providence of God, it hath graciously pleased King Charles the II. of England, &c. for divers good considerations, to grant by his letters patents, under the Great Seal of England to William Penn, esq. son and heir of Sir William Penn, deceased, and to his heirs and assigns for ever, this province of Pennsylvania; according to the bounds therein expressed; with all requisite powers for the good government thereof, by such laws as he and they shall make, by and with the advice and consent of the freemen of the said province or their deputies, not repugnant to their faith and allegiance to the legal government of the said realm: And it having also favourably pleased James, Duke of York and Albany, Earl of Ulster, &c. to release his right and claim to all and every part thereof, unto the said William Penn, his heirs and assigns; whereby he, the said William Penn is become the undoubted and rightful Proprietary and Governor of the province of Pennsylvania, and is hereby freely and fully so recognized and acknowledged. And as a beneficial and requisite addition to the territory of the said Proprietary and Governor, it hath also pleased the said

James, Duke<sup>o</sup> of York and Albany, &c. for divers good considerations, to grant unto the said William Penn, and his heirs and assigns, all that tract of land, from twelve miles northward of New-Castle, on the river Delaware, down to the south-cape, commonly called Cape Henlope, and by the Proprietary and Governor now called Cape James, lying on the west side of the said river and bay, formerly possessed by the Dutch, and bought by them of the natives, and first surrendered upon articles of peace to the King's Lieutenant Governor, Colonel Nicholls, and a second time to Sir Edmund Androsse, Lieutenant Governor to the said Duke, and hath been by him quietly possessed and enjoyed; as also the said river of Delaware, and soil thereof, and all islands therein, lately cast into three counties, called New-Castle, Jones's and Whorekills, *alias* New-Dale; together with all royalties, powers and jurisdictions thereunto belonging, as by two deeds of feoffment, bearing date the twenty-fourth of the sixth month called August, One Thousand Six Hundred and Eighty-two, doth more at large appear. And forasmuch as there must always be a people before there can be a government, and that people must be united and free, in order to settle and encourage them, for the prosperity of the government: And since the inhabitants of the tract of land, lately passed from the Duke, as aforesaid, are not yet thereby under the same capacity that those are that belong to the province of Pennsylvania: *And whereas* the freemen of the said counties have, by their deputies, humbly besought their present Proprietary and Governor, to annex the said counties to the province of Pennsylvania, and to grant unto them the same privileges; and that they may live under the same laws and government that the inhabitants of the said province of Pennsylvania, now do, or hereafter shall enjoy: *And* since the union of the two distinct people that are under one Governor, is both most desirable in itself and beneficial to the public, and that it cannot be so cordially and durably maintained, to the mutual benefits of each other, as by making them equally sharers in benefits and privileges;

*BE it enacted by the Proprietary and Governor aforesaid, by and with the advice and consent of the deputies of the freemen of the province, and counties aforesaid, in Assembly met, That*

the counties of New-Castle, Jones's, and Whorekills, *alias* New-Dale, shall be annexed, and by the authority aforesaid, are hereby annexed unto the province of Pennsylvania, as of the proper territory thereof; and the people therein shall be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania do, or shall enjoy from time to time therein, any thing in this law, or any other law, act or thing in this province, to the contrary thereof in anywise notwithstanding. *And forasmuch as it is apparent, that the just encouragement of the inhabitants of this province, and territories thereunto belonging, is likely to be an effectual way for the improvement thereof: And since some of the people that live therein, and are like to come thereinto, are foreigners, and so not freemen, according to the acceptation of the laws of England, the consequences of which may prove very detrimental to them in their estates and traffic, and so injurious to the prosperity of this province, and territories thereof, Be it enacted by the Proprietary and Governor of the province, and counties aforesaid, by and with the advice and consent of the deputies of the freemen thereof, in Assembly met,* That all persons, who are strangers and foreigners, that now do inhabit this province, and counties aforesaid, that hold land in fee in the same, according to the law of a freeman, and who shall solemnly promise, within three months after the publication hereof, in their respective county courts where they live, upon record, faith, and allegiance unto the King of England, and his heirs and successors; and fidelity and lawful obedience to the said William Penn, Proprietary and Governor of the said province and territories, and his heirs and assigns, according to the King's letters patent, and deeds aforesaid, shall be held and reputed freemen of the province, and counties aforesaid, in as ample and full manner as any person residing therein. *And it is hereby further enacted by the authority aforesaid,* That when at any time; any person that is a foreigner, shall make his request to the Proprietary and Governor of this province and territories thereof, for the aforesaid freedom, the said person shall be admitted on the conditions herein expressed, paying at his admission Twenty Shillings sterling, and no more, any thing in this law, or any other law, act or thing in this province, to the contrary in anywise notwithstanding.

The three lower counties annexed to the province.

All foreigners promising allegiance, &c., naturalized.

*GIVEN at Chester, alias Upland, the seventh day of the tenth month, called December, One Thousand Six Hundred and Eighty-two, under the hand and broad seal of William Penn, Proprietary and Governor of this province, and territories thereunto belonging, being the second year of his government, by the King's authority.*

W. PENN.

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**Supposed Letters Patent from Charles II. to Duke of York.**

*King Charles the Second's Grant of the Town of New-Castle, and the three lower Counties, to the Duke of York.*

Charles, by the grace of God, King of *England, Scotland, France and Ireland*, defender of the faith, &c. To all to whom these presents shall come, *Greeting*. Know ye, that we, for divers good causes and considerations us thereunto moving, have, of our especial grace, certain knowledge, and meer motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our dearest brother James, Duke of *York*; his heirs and assigns, all that the town of *New-Castle*, otherwise called *Delaware*, and fort therein or thereunto belonging, situate, lying and being between *Maryland* and *New Jersey*, in *America*, and all that tract of land lying within the compass or circle of twelve miles above the said town, situate, lying and being upon the river *Delaware*, and all the Islands in the said river of *Delaware*, and the said river and soil thereof lying north of the southermost part of the said circle of twelve miles about the said town; and all that tract of land upon *Delaware* river and Bay, beginning twelve miles south from the said town of *New-Castle*, otherwise called *Delaware*, and extending south to *Cape Lopen*; together with all the lands, islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowlings, and all other royalties, privileges, profits, commodities and hereditaments, to the said town, fort, tracts of land, islands and premises, or to any or either of them belonging or appertaining, with their and every of the appurtenances, situate, lying and being in *America*; and all our estate, right, title, and interest, benefit, advantage, claim and demand whatsoever, of, in,



or to the said town, fort, lands, or premises, or any part or parcel thereof, together with the yearly and other rents, revenues, and profits of the premises, and of every part and parcel thereof; *to have and to hold* the said town of *New-Castle*, otherwise called *Delaware*, and fort, and all and singular the said lands and premises, with their and every of their appurtenances hereby given and granted, or herein before mentioned to be given and granted unto our said dearest brother James, Duke of *York*, his heirs and assigns, for ever; to be holden of us, our heirs, and successors, as of our manor of *East-Greenwich*, in our county of *Kent*, in free and common soccage, and not in capite, nor by Knight's service, *yielding and rendering*, and the said James, Duke of *York*, for himself, his heirs and assigns, doth covenant and promise, to *yield and render* unto us, our heirs and successors, of and for the same yearly, and every year, four Beaver skins, when the same shall be demanded, or within ninety days after such demand made. And we do further of our special grace, certain knowledge and meer motion, for us, our heirs and successors, give and grant unto our dearest brother JAMES, Duke of *York*, his heirs, deputies, agents, commissioners, and assigns, by these presents, full and absolute power and authority, to correct, punish, pardon, govern and rule, all such the subjects of us, our heirs and successors, or any other person or persons as shall from time to time adventure themselves into any the ports and places aforesaid, or that shall or do at any time hereafter inhabit the same, according to such laws, orders, ordinances, and institutions, as by our said dearest brother, or his assigns, shall be established; and in defect thereof, in case of necessity, according to the good discretion of his deputies, commissioners, officers, or assigns respectively, as well in cases and matters capital and criminal as civil, both marine and others, so always as the said statutes, ordinances and proceedings be not contrary, but (as near as may be) agreeable to the laws, statutes and government of this our realm of *England*: and *saving and reserving* to us, our heirs and successors, the receiving, hearing and determining of the appeal and appeals of all, or any person or persons of, in, or belonging to the town, fort, lands and premises aforesaid, or touching any judgment or sentence to be there made or given. And further, that it shall and may be lawful to and for our dearest brother, his heirs and assigns, by these presents, from time to

time, to nominate, make, constitute, ordain and confirm such laws as aforesaid, by such name or names, stile or stiles, as to him or them shall seem good ; and likewise to revolve, discharge, change and alter as well all and singular governors, officers and ministers, which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid town, fort, lands and premises ; and also to make, ordain and establish all manner of laws, orders, directions instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of said town, fort, lands and premises, so always as the same be not contrary to the laws and statutes of this our realm of *England*, but (as near as may be) agreeably thereunto, and the same at all times hereafter to put in execution, or abrogate, revoke or change, not only within the precincts of the said town, fort, lands and premises, but also upon the seas, in going and coming to and from the same, as he or they, in their good discretion, shall think fittest for the good of the adventurers and inhabitants. And we do further, of our special grace, certain knowledge, and meer motion, grant, ordain and declare, that such governors, deputies, officers and ministers, as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority within the said town, fort, lands and premises, to use and exercise martial law in case of rebellion, insurrection and mutiny, in as large and ample manner as our lieutenants in our counties within our realm of *England* have, or ought to have, be force of their commissions of lieutenancy, or any law or statute of this our realm. And we do further by these presents, for us, our heirs and successors, grant unto our dearest brother JAMES, Duke of *York*, his heirs and assigns, in his and their discretions, from time to time ; to admit such and so many person and persons to trade and traffick unto and within the said town, fort, lands and premises, and into every and any part and parcel thereof, and to have, possess, and enjoy any lands and hereditaments in the parts and places aforesaid, as they shall think fit, according to the laws, orders, constitutions and ordinances, by our said brother, his heirs, deputies, commissioners and assigns, from time to time to be made and established by virtue of, and according to, the true intent and meaning of these presents, and under such conditions, reservations and agreements, as our said



dearest brother, his heirs and assigns, shall set down, order, direct and appoint, and not otherwise, as aforesaid.

And we do further, of our special grace, certain knowledge, and meer motion, for us, our heirs, and successors, give and grant unto our said dearest brother, his heirs and assigns, by these presents, that it shall and may be lawful to and for him, them, at all and every time and times hereafter, out of any our realms or dominions whatsoever, to take, load, carry, and transport, in and into their voyages for and towards the plantation of the said town, fort, lands and premises, all such and so many of our living subjects, or any other strangers, being not prohibited, or under restraint, that will become our living subjects, and live under our allegiance, and shall willingly accompany them in the said voyage, together with all such cloathing, implements, furniture, or other things usually transported, and not prohibited, as shall be necessary for the inhabitants of the said town, fort, lands and premises, and for their use and defence thereof, and managing and carrying on the trade with the people there, and in passing and returning to and fro; *yielding* and *paying* unto us, our heirs and successors, the customs and duties therefor due and payable, according to the laws and customs of this our realm. And we do also, for us, our heirs and successors, grant to our said dearest brother James, Duke of York, his heirs and assigns, and to all and every such governor and governors, deputy or deputies, or their officers or ministers, as by our said brother, his heirs or assigns, shall be appointed, over the inhabitants of the said town, fort, lands and premises, that they and every of them shall, and lawfully may, from time to time, and at all times for ever hereafter, for their several defences and safety, encounter, repulse and expel, and resist, by force of arms, as well by sea as by land, and by all ways and means whatsoever, all such person and persons as, without the special license of our said dearest brother, his heirs or assigns, shall attempt to settle and inhabit within the several precincts and limits of the said town, fort, lands and premises; and also all and every such person or persons whatsoever as shall enterprize and attempt at any time hereafter, the destruction, invasion, detriment or annoyance, to the parts, places, town, fort, lands and premises aforesaid, or any part thereof.

And lastly, our will and pleasure is, and we do hereby declare

and grant, that these our letters patents, or the enrolments thereof, shall be good and effectual in law, to all intents and purposes whatsoever, notwithstanding the not well or true reciting or mentioning of the premises, or any part thereof, or the limits or bounds thereof, or of any former or other letters patents or grants whatsoever, made or granted of the premises, or of any part thereof, by us, or any of our progenitors, unto any person or persons whatsoever, bodies politick or corporate, or any other law or other restraint;\* in certainty or imperfection whatsoever to the contrary in any wise notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gift or grants by us, or by any of our progenitors henceforth made to the said James, Duke of York, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction heretofore had, made, enacted or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in any wise notwithstanding. In witness whereof, we have caused these our letters to be made patents, witness ourself, at *Westminster*, the twenty-second day of *March*, in the thirty-fifth year of our Reign.

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Wm. Penn and Lord Baltimore.

*From a MS. in possession of J. P. Norris, Esq.*

At the Court of Whitehall, this 13th day of November, 1685.

PRESENT.

The King's Most Excellent Maj'ty,	
His R <sup>ll</sup> . H <sup>ss</sup> . Pr. George	Earle of Craven
Lord Arch Bishop of Cant.	Earle of Berkeley
Lord Chancellor	Earle of Nottingham
Lord Treasurer	Earle of Plymouth
Lord Privy Seal	Earle of Murray
Duke of Ormond	Earle of Middleton
Duke of Beaufort	Lord vise. Faleonbridge
Duke of Queensbury	Lord Vise't. Preston

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\* Perhaps it ought to be *Incertainly*.

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Lord Chamberlaine	Lord Vis'e't. Melfort
Earle of Huntingdon	Lord Bishop. of London
Earle of Bridgewater	Lord Dartmouth
Earle of Petersborough	Lord Godolphin
Earle of Sunderland	Mr. Chall. of ye Excheqr.

The following report from the Rt. Honble the Lords of the committee for trade and foreign plantations being this day read at the board. The Lords of the committee for trade and plantations having pursuant to his *late* Maj'tys order in councill of the 31st of May 1683 examined the matters in difference between the Lord Baltimore and William Penn Esq. in behalf of his *present* majesty concerning a tract of land in America, commonly called Delaware. Their Lordships find that the land intended to be granted by the Lord Baltimore's patent was only land uncultivated and inhabited by Savages and this tract of land now in dispute was inhabited and planted by Christians at and before the date of the Lord Baltimore's patent, as it hath been ever since to this time and continues as a distinct colony from that of Maryland soe that their Lordships humbly offer their opinion That for avoiding further differinces, the tract of land lying between the river and bay of Delaware and the Eastearne sea on the one side and Chesapeake Bay on the other, be *divided into equal parts by a line* from the Latitude of Cape Henlopen to the 40th deg. of northerne Latitude and that *one half thereof lying towards the Bay of Delaware and the Eastern sea be adjudged to belong to his majesty* and that the other half remaine to the Lord Baltimore as comprised in his charter.

Council Chamber 8 Nov. 1685.

His Majesty well approving of the said report it was thereupon ordered by his Maj'ties Ex. Council that the said lands be forthwith divided accordingly, whereof the said Lord Baltimore and William Penn Esq. together with their respective officers and all others whom it may concerne are to take notice and give due and ready obedience there.

Signed WM. BRIDGEMAN.

This is a true copy of the original  
done by the Gover'r.

WM. MARKHAM, Sec'y.

At the Court of Kensington, the twenty fifth day of May,  
1738.

## PRESENT.

The King's Most Excellent Majesty	
Archbishop of Canterbury	Earl of Selkirk
Lord President	Earl of Hay
Lord Steward	Earl Fitzwalter
Lord Chamberlain	Viscount Lonsdale
Duke of Bolton	Viscount Forrington
Duke of Devonshire	Lord Harrington
Duke of New Castle	Mr. Chan. of Exch.
Earl of Scarborough	Sir Charles Wills
Earl of Grantham	Henry Pelham, Esq.
Earl of Cholmondeley	Sir Charles Wager.

Upon reading at the Board a report from the right honourable the Lords of the Committee of Council for Plantation Affairs, dated the fourth of this instant, in the words following, vizt.

Your Majesty having been pleased, by your orders in Council of the seventeenth of March, 1736-7, and the twenty first of July, 1737, to refer unto this committee, several petitions from the President, Council, and General Assembly of the Province of Pennsylvania; and likewise from the Governor and Council, and the commissary and clergy of the province of Maryland, which petitions represent (amongst other things) that great disorders and outrages have been committed upon the borders of the said respective provinces, and humbly praying your Majesty's most gracious interposition and commands for the preservation of the peace on the said borders, until the boundaries of the said provinces shall be finally settled and adjusted. The Lords of the committee of Council did on the twenty ninth of the said month of July, take the matter of the said complaints into their consideration: and thereupon reported to your Majesty what they thought most advisable for your Majesty to do, in order to prevent the further continuance of the said disorders, and to preserve peace and tranquility on the said borders, until the boundaries should be finally settled. And your Majesty having approved of what was proposed by the said report, was pleased, by your order in council, of the eighteenth of August 1737, to direct as follows, viz:

That the governors of the respective provinces of Maryland and Pennsylvania, for the time being, do not, upon pain of in-

curring his Majesty's highest displeasure, permit or suffer any tumults, riots or other outrageous disorders to be committed on the borders of their respective provinces; but that they do immediately put a stop thereto, and use their utmost endeavours to preserve peace and good order amongst all his Majesty's subjects under their government, inhabiting the said borders. And as a means to preserve peace and tranquility on the said borders, his Majesty doth hereby enjoin the said governors, *that they do not make grants* of any parts of the lands in contest between the proprietaries respectively, *nor of any part of the three lower counties, commonly called New-Castle, Kent and Sussex*; nor permit any person to settle there, or even to attempt to make a settlement thereon, till his Majesty's pleasure shall be further signified. And his Majesty is further pleased to direct that this order, together with duplicates thereof, be delivered to the proprietaries of the said provinces, who are hereby required to transmit the same forthwith to the governors of the said respective provinces accordingly.

That since the issuing the said order, your Majesty hath been pleased to refer unto this committee an address of the deputy governor, and of the upper and lower houses of assembly, of the province of Maryland, relating to a continuance of the said disorders; and also two petitions, the one in the name of John, Thomas; and Richard Penn, Esquires, proprietaries of the province of Pennsylvania, praying your Majesty's further pleasure may be signified relating to your Majesty's afore-recited order in council of the eighteenth of August, 1737, and the other in the name of the agent of the said province of Pennsylvania, complaining of fresh disorders committed by the inhabitants of Maryland against those of Pennsylvania: Whereupon the Lords of the Committee did, on the twenty third day of February last, proceed to take all the papers relating to the complaints made by each of the said provinces, into consideration, and were attended by council on both sides, and likewise by the proprietaries of the said provinces; and the council desiring that some reasonable time might be allowed the proprietaries to confer together in order to come to some agreement amongst themselves, that so the peace and tranquility of both provinces may be preserved, until such time as the boundaries can be finally settled. The Lords of the Committee thought



proper to comply with such their request; and being this day again attended by all parties, the council acquainted the Committee, that *the proprietaries* of each province had accordingly met and *agreed* to the following propositions, viz.

I. That so much of the Majesty's order in council of the eighteenth of August, 1737, as orders, That the governor's of the respective provinces of Maryland and Pennsylvania, for the time being, do not, on pain of incurring his Majesty's highest displeasure, permit or suffer any tumults, riots or other outrageous disorders, to be committed on the borders of their respective provinces, but that they do immediately put a stop thereto, and use their utmost endeavors to preserve peace and good order amongst all his Majesty's subjects under their government, inhabiting the said borders, do stand in force and be observed.

II. That there being no riots that appear to have been committed within the three lower counties of New-Castle, Kent & Sussex, upon Delaware, it is therefore not tho't necessary to continue the latter part of the said order in council, as to the said three lower counties, (but that the said former order in council, so far as relates to the said three Lower Counties) be discharged without prejudice to either of the proprietaries, as if the same had never been made.

III. That all other lands, in contest between the said proprietaries, now possessed by or under either of them, shall remain in the possession as they now are (although beyond the temporary limits hereafter mentioned) and also the jurisdiction of the respective proprietaries shall continue over such lands until the boundaries shall be finally settled; and that the tenants of either side shall not attorn to the other; nor shall either of the proprietaries, or their officers, receive or accept of attornments from the tenants of the other proprietary.

IV. That as to all vacant lands, in contest between the proprietaries, not lying within either of the Three Lower Counties, and not now possessed by or under either of them, on the East side of the river Susquehannah down so far south as fifteen miles and one quarter of a mile south of the latitude of the most southern part of the city of Philadelphia, and on the west side of the said river Susquehannah, down so far south as fourteen miles and three quarters of a mile south of the latitude of the most southern part of the city of Philadelphia, the temporary

jurisdiction over the same is agreed to be exercised by the proprietaries of Pennsylvania, and their Governor, Courts, and Officers. And as to such vacant lands in contest between the proprietaries, and not now possessed by or under either of them, on both sides of the river Susquehannah, south of the respective southern limits in this paragraph before mentioned; the temporary jurisdiction over the same is agreed to be exercised by the proprietary of Maryland, and his Governor, Courts, and Officers, without prejudice to either proprietary, and until the boundaries shall be finally settled.

V. That the respective proprietaries shall be at free liberty to grant out on the common and usual terms, all or any vacant lands within the said province of Pennsylvania and Maryland, in contest between the said proprietaries, (that is to say, within their own respective sides of the said several limits, mentioned in the last foregoing paragraph.) For the which lands, and the profits of the same also, each proprietary shall account to the other, who may be adjudged to be the proprietary thereof, upon the final determination of the boundaries between the two provinces.

VI. That all prisoners, on both sides, on account of being concerned in any riots or disturbances, relating to the bounds, or for any act or thing done thereat, or for any other act touching the right of either of the said provinces, in relation to their bounds, be forthwith released and discharged, on entering into their own respective recognizances, in a reasonable sum, to appear and submit to trial, when called upon by further order from his majesty.

VII. That this be declared to be a provisional and temporary order, to continue until the boundaries shall be finally settled, and declared to be without prejudice to either party.

VIII. That his Majesty be most humbly moved to discharge so much of the order of the eighteenth of August 1737, as varies from this agreement; and that the several other petitions of complaint, now depending before his Majesty in Council, relating to any disturbances, may be withdrawn by the respective petitioners.

To which propositions, the proprietaries of each province signified their consent before the committee, and declared their readiness to carry the same into execution, if your Majesty shall



be pleased to approve thereof: And the committee considering that this agreement may be a proper expedient for restoring peace and tranquility between the said provinces, and for preventing any the like disturbances for the future, do therefore agree humbly to lay the same before your Majesty, for your royal approbation.

His Majesty this day took the said report into consideration, and, in order to preserve peace and tranquility between the said provinces, and to prevent any the like disturbances for the future, is pleased, with the advice of his Privy Council, to approve of the said agreement entered into between the proprietaries of the said respective provinces. And his majesty is hereby pleased to order, that the proprietaries of the said respective provinces of Maryland and Pennsylvania, do cause the said agreement to be carried into execution, whereof the said proprietaries, and all others whom it may concern, are to take notice, and govern themselves accordingly.

JA. VERNON.

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[The following is copied from an old MS. (without date) in the possession of "*The Historical Committee of the American Philosophical Society*." It has been so much injured as occasionally to render it impossible to discover some of the words—which we have occasionally supplied in brackets [ ]. The asterisks \* denote entire omissions. About A. D. 1715.]

#### The Claims of y<sup>e</sup> Proprietors of Maryland and Pensilvania.

The Boundaries of the Provinces of Maryland and Pensilvania, and of the three Lower Counties upon Delaware annexed to Pensilvania (all which joyn on each other) having never yet been fixed, nor any Division Lines run between them, the Northern Limits of Maryland and the Southern of Pensilvania are disputed by their respective Proprietors, the Ld Baltimore and William Penn, Esq. as is the Title also, in some measure, to the whole said three Counties, and the Grounds of the Dispute are as follows, viz:

Cœcilus Calvert, Baron of Baltimore, in the Kingdom of Ireland, obtained of King Charles the first, by His Letters Patent, bearing date 20th of June 1632, the grant of a Tract of Land named Maryland, in which the sd Patent is thus described,

viz: "That part of a Peninsula lying in the parts of America between the Ocean on the East, and the Bay of Chesapeake on the West, and divided from the other part thereof by a right line drawn from the Promontary or Cape of Land called Watkins point (Scituate in the aforesaid Bay near the River of Wigheo) on the West, unto the main Ocean on the East, and between that bound on the South, unto that part of Delaware Bay on the North which lieth under the fortieth Degree of Northern Latitude from the Equinoctial, where New England ends. And all that Tract of Land between the Bounds aforesaid, that is to say, passing from the aforesaid Bay, called Delaware Bay, in a right line by the Degree aforesaid unto the true Meridian of the first fountain of the River Potowmeek, and from thence trending towards the South unto the farther Bank of the [river] aforesaid, and following the West and South side thereof unto [a certain] place called Cinquake, scituate near the mouth of the said River, where it falls into the Bay of Chesapeake, [and from] thence by a Streight line unto the afores'd Promontory at a place called Watkins point, &c."

By this Grant the present Lord Baltimore extends his Claim Northward to the Parallel of forty degrees of Latitude compleat, to be yet found out, and fixed, which according to their present Notion of it will fall much *much* more Northerly than formerly was imagined.

But King Charles the 2d by his Letters Patent bearing date the 4th day of March, A. D. 1680, Granted to William [Penn the] Countrey called Pensilvania, herein after described [between] fixed Bounds to the Southward, with which that extended claim of the Lord Baltimore much interferes, that according to their present pretentions (could they also come fully up to Delaware) Maryland would take in the principal and most valuable part of all Pensilvania, the Improvements and Estates of a great part of the first adventurers, even all the City Philadelphia itself; the Buildings of which alone would at this time more than Doubly purchase all the Towns in Maryland.

But that this extended claim has no equitable or solid Foundation, and that Maryland has no right further Northward than is consistent with the Grant of Pensilvania, tho' the Latitudes of those parts should be now found Different from what they

were formerly understood to be, will ('tis supposed) manifestly appear from [what] follows.

When such remote [countries as could] not be duly Survey'd are granted, where known [fixed lines,] such as Capes, Rivers, &c. are named, if clear from [aforesaid lines] at the time, they cannot be disputed. But when such Bounds as Astronomical Lines, which no mortal could ever yet exactly fix, are made use of, 'tis presumed the Bounds of the Grant ought to be limited as nearly as may be, to what they were understood by the Grantor; otherwise, as Men's Notions in Astronomy through succeeding ages very much vary, if left to be determined by the truest observation they must forever be uncertain and disputable.

The intended Northern Boundary of Maryland, as given by the Grant, in a line passing from that part of Delaware Bay which is under the fortieth degree of Latitude. And as the Southern limits are fixed to a certain spot, viz: Watkins Point on the river Pokomoake, fallsly called Wigheo in the Patent, so Delaware Bay is the first thing named in the Northern Bounds, and to this they are in express words twice over limited, viz: first, *Unto that part of the Delaware Bay on the North* (says the Grant) *which lieth under the fortieth Degree*; And again, *Passing from the aforesaid Bay, called Delaware Bay, in a right line by the Degree aforesaid*. So that here are two particulars named for fixing the Boundary, first, Delaware Bay, which is a certain known place on the earth of a considerable Extent; and next, the fortieth degree of Latitude. But the fortieth Degree taken Literally, is no certain indivisible line, but a Zone containing the space of Sixty Minutes or Mariner's Miles, for as the Eighteenth Century is all those Hundred Years between Seventeen and Eighteen hundred, So the fortieth Degree is all that space between thirty-nine and forty Degrees compleat, and the Patent mentioning neither any determinate spott on Delaware Bay, nor the beginning, middle, nor end of the 40th Degree, the Northern Bounds of Maryland by the Words of the Grant, literally taken, are left loose and uncertain.

Yet, however, this happened to be expressed, 'tis very probable that by the 40th Degree was intended the parallel of 40 Degrees compleat. But then 'tis evident it was also understood that this parallel did not extend beyond Delaware Bay, and that the whole Limits intended to be granted for that province was

to some part of that Bay and no farther. This therefore appearing, by express words twice repeated, to be the intention of the Grant, and the Degree of Latitude happening to be expressed by an uncertain term, seeing almost all Delaware Bay lies under the 40th Degree, tho' it reaches not to the end of it, the only method that appears to be left to reconcile the Language of the Grant to itself as also to the Intention of it, is to extend it to the most northerly part of Delaware Bay, which when allowed, will give Maryland as great an Extent of Ground as ever was designed for it at the time of the Grant, as will now more fully appear. Now tho' this Bay is among [the lines] generally understood to end at those Islands called \*\*\*\*\* Hook, yet it may be allowed to reach up to \*\*\*\*\* point on New Jersey side, not much below the town of Newcastle, or because of the great Bite under the town even to Newcastle itself, from whence Delaware becomes a smooth regular River upwards, and at that place being but narrow much more justly claims that name than Potowmeek which even at its mouth is called a River in the Patent for Maryland though it is not less in that place, than 15 miles over.

Thus much being said concerning the Northern Boundary as it is to pass from Delaware Bay, It will further appear ('tis conceived,) by what follows, that without regard to this Bay, a line passing from the aforesaid place or thereabouts, is the utmost that was intended by the Grant for Maryland.

When a Country is to be described, that is not an Island the description must be taken from a draught of it, now that this of Maryland was taken from Capt. John Smith's Map of that Countrey, published in his Book called the General History of Virginia, N. England, &c. is evident. This Book was published in the year 1624, and was so much in request for the large and entertaining accounts he gives of those first settlements and of his own adventures, that it had no less than three editions before the year 1634, the Date of the Maryland Patent. The map in it may be presumed to be the exactest that could then be had; the Description in the Patent exactly agrees in all the places, names, there mentioned in or about Chesopeak Bay, even in that mistake where he calls the well known River Pocomoak by the name of Wighco, after which the patent copies, and for this mistake those of Maryland account from that map from

whence some other maps, especially that partial one of Aug. Herman, calculated in favour of the Lord Baltimore, add both names, viz: Wigheo alias Pocomoak. Now the Latitudes being given in this map from the one end to the other, the parallel of forty degrees, the line contended for by Maryland, is placed about six miles above the head of Chesopeak Bay, which is very nearly on a parallel or West line from Newcastle upon Delaware, the place before mentioned, which is a second proof that this was truly the intended Limits of the Grant.

But it is from hence further observable, That, notwithstanding the Lord Baltimore in his petition to the King (as the writer is credibly informed) prayed for the Grant of two Degrees of Latitude, that is 120 Mariner's miles, from South to North, yet according to this map of Captain Smith's, which layes Watkins point (from whence the patent begins in the Latitude of 38 deg. 10 minutes, there was no more intended by the Grant than one degree and fifty minutes, or one hundred and ten such miles. But now on the other hand they have laid down the same Watkins point and its opposite point, Look-out, called Cinquaek in the patent, which are the Southern Bounds of Maryland, in the Latitude of 37 deg. 48. min. that is, 22 minutes more Southerly than it was understood to be, at the time the Grant was made, and when it was to extend to the Fortieth Degree, as 'tis called. From whence, were Maryland to be confined to the same length Northwards that by this map (which unquestionably was their rule) was intended to be granted, it would extend, supposing the latter observation right, no farther than to 39 deg. 38 min. and yet contain the full length that was at first intended for it.

But what most effectually clears up the point as well in relation to Delaware Bay as the Intention of the Grant is this—In the beginning of the Description of Maryland the Eastern part of it is called part of a Peninsula, (the rest of it being reserved in the patent to Virginia) said to lie between the Ocean on the East, and the Chesopeak Bay on the West, where Delaware Bay is not taken notice of, a small part only of the whole peninsula being bounded by that Bay. Now if it be a peninsula, as it really is, it must have its Isthmus or narrow neck of land, which is truly made by Chesopeak Bay bending in to the Eastward, at the head of it, as appears clearly by all the draughts, and thereby the great branch of Elk draws so near to Delaware, that it is not



above 10 miles distant from the Bite that bends in Westerly, just below Newcastle, where the Isthmus is effectually made. And this falls so near to where Smith placed the parallel of 40 (for to the eye his map makes that parallel fall in very nearly with the head of Elk, which he calls Gunters Harbour) and so fully confirms what has before been advanced, that to stretch Maryland any further would be to doe Violence to the express words of all the parts of the grant itself, as well as to its manifest Intention. For, whereas the Bay from the Capes lies to the Westward of the North, the River above the town of Newcastle takes quite another course, no less than about five points of the compass to the Eastward, and Susquehannah River bending Westward, and considerably more so than the maps lay it down, these two Rivers diverge so much, and are so far afterwards from making anything like an Isthmus that at the town of Philadelphia they are no less than sixty miles distant on a streight Westerly line, as on a certain occasion it has been measured through the woods. From all these considerations therefore, viz: The Grant being confined to the Bay which at the utmost cannot exceed Newcastle. The Latitude as given by Smith's map, from whence Maryland was described, which falls nearly in with Newcastle, and the peninsula having its isthmus near the same place, 'tis presumed there can be no room left to doubt where Maryland ought to end.

This being thus far settled, the next to be considered is the Grant for Pensilvania, which in the Letters Patent of King Charles the 2d for that Province, bearing date the 4th day of March, A. D. 1680, is thus described, viz: "All that Tract or parcel of Land in America, with all the Islands therein contained, as the same is Bounded on the East by Delaware River *from 12 miles distance* Northwards of Newcastle Town unto the three and fortieth Degree of Northern Latitude, if the said river doth extend so far Northward, but if the said River shall not extend so far Northward, then by the said river so far as it doth extend; and from the head of the said River the Eastern Bounds are to be determined by a Meridian line to be drawn from the said River unto the three and fortieth degree. The said lands to extend Westward five degrees of Longitude, to be computed from the said Eastern Bounds, and the said lands to be bounded to the North by the Beginning of the three and

fortieth Degree of Northern Latitude, and *on the South by a circle drawn at 12 ms. distance from Newcastle, Northward and Westward*, unto the beginning of the fortieth degree of Northern Latitude, then by a streight line Westward to the limits of Longitude above mentioned."

Here Pensylvania begins at a determinate fixed place, viz. at twelve miles distance from Newcastle Town on Delaware River, which Town with a circle of land 12 miles round it, (and all the rest below on that Bay was reserved by the King to his Brother, the Duke of York, who afterwards granted it to William Penn,) as Maryland also begins at a known place, viz. Watkins point; and it reaches Northwards to the three and fortieth degree, but this is afterwards called the beginning of that degree, which, if the reckoning begins at the Equinoctial, would extend it only to the end of the two and fortieth, or the parallel of 42 compleat, by which rule were the fortieth degree to be taken in the Charter for Maryland, they would reach no farther than to 39 compleat. Pensylvania, by the patent for it, extending Southwards to the beginning of the fortieth degree which is the parallel of 39. But waiving this, the Southern Bounds of Pensylvania on that side are the Northward and Westward parts of a circle drawn about Newcastle Town at 12 miles distance from it; so that it ought to extend as far South as the said Town at that distance, that is, it ought at the back of the Circle to come down to a parallel drawn Due West from Newcastle, which still exactly agrees with the Boundary to which 'tis hoped it has been abundantly proved that Maryland ought to be Limited, Inso-much that taking both Grants together they as exactly correspond as if they had been both done at the same time and by the same hand, saving that at the time of the latter Newcastle was known to be on other right.

Thus have the Rights of both Provinces in relation to their Boundaries on each other been freely stated and cleared up, according to which were a Division Line run by consent, or a sufficient authority, it would give each their due and putt a final period to all differences on this head, and render all those concerned in the disputed lands quiet and easy.

But instead of this, the late Lord Baltimore accounting nothing less than the Parallel of 40 Degrees to be his right, about the year 1682, and soon after the Grant of Pensylvania



to its proprietor, being then in Maryland, resolved to find out that Degree and by it fix his Boundary, and to extend his claim along Delaware Bay, &c. notwithstanding the lands upon it had been either in the possession of another nation, or on another right from before the date of his patent, of which more hereafter. Accordingly he took with him the Surveyor General of his province, and divers other Surveyors, with several commanders of ships then in Maryland, who were artists. And accompanied with these and others of his principal officers, with divers Instruments, especially one large Quadrant, they took their station on Palmer's Island, near the mouth of Sasquehannah River, which is the head of the Bay, and tho' some of the commanders could not before be perswaded that the Latitude of 40 reached so high, yet after two days trial (as the writer has the account from some then present, and who are yet *living*) they found themselves short of that parallel 9 minutes; the first day and the next being somewhat cloudy and obscure they wanted 13 minutes [which difference they might easily have judged was owing to the refraction through a thick air or the clouds] but leaning to the latter which gave most, they computed they yet wanted twelve miles—and accordingly measured that distance, which carried the Latitude of 40 about 6 miles further North than Capt. Smith had laid it down, and from hence a line was immediately run by the Lord Baltimore's order cross over the land to Delaware River, some of the mark trees of which are to be seen at this day, which line by reason, as 'tis believed, of the variation of the Compass which was then about nine degrees Westward (and therefore as they came Eastward would carry them more Northerly) brought them in upon the North line from Newcastle at or about 10 or 11 miles distance from the Town, and from that line they pretended to claim all to the Southward; which claim on another brought on the hearing before the King and Council, that will hereafter be mentioned.

But not content with this they have *lately* sent over from England a larger instrument, with which their Agent in Maryland with two artists came to the head of the Bay on Elk River, and about the time of the Equinox in the spring 1714, made several observations with great exactness, as they pretended, and from them they not only claimed 12 miles, as the late Lord Baltimore had done before, but above 30 miles Northwards,

which is about four or five and twenty into the province of Pensilvania as granted by the King.

That mistakes have been committed about the Latitudes of these parts of the world is not to be doubted; and that the parallel of 40 will be found more northerly than was supposed at the time of the aforementioned Grants, is very probable. But that Maryland has no right to that parallel if it lie to the Northward of the isthmus or above Delaware Bay has, 'tis hoped, been made fully appear. Upon which it may further deserve to be considered, That as in Grants of this kind for a Colony, it is not the preciseness of the Pole's elevation in the Heavens that is to be regarded by the planters and improvers, but the conveniency of the tract itself upon the earth as scituate between such and such bounds. So these of Maryland may indisputably enjoy the same limits that were at first expected. Watkins Point, where the Grant begins was then supposed to lie ten miles Northward of thirty eight degrees, and yet now they\* place it twelve miles to the Southward of that degree; yet Watkins point is still their Boundary tho' 22 miles distant from the Latitude it was supposed to be in, when granted. If then their province begins 22 minutes more southerly than was at first understood, because the Charter began there by naming the spott, So by the same reason they ought to stand to those Bounds to the Northward that were then also intended, tho' their charter were clearer for them than it is, and more especially considering another province has since been granted upon those Bounds, as then understood, and many hundreds of families have laid out their Estates upon that Grant which prove within those Bounds they would now pretend to claim or at least to call into dispute.

But beside that, it has been shown that the boundary between these provinces neither ought nor can be determined by new discoveries now to be made of the Latitude. It may not perhaps be amiss to take notice of the uncertainty of those observations.

'Tis well known by Astronomers, whose business it is to reduce the science of Celestial Motions as near as may be to a Certainty, that an Exactness in the Latitude of the place they observe in, is the foundation of all their afterworks, and there-

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\* Vide Herman's great map made for ye Lord Baltimore.

fore requires the utmost accuracy and application—yet great have been the differences in this point between the ablest men this way. Copernicus and Tycho Brahe, two famous names in astronomy, differed in the Latitude of Frunomberg in Prussia, where the former made his observations three minutes, which with such men is considerable. Regiomontanus, the great restorer of the Mathematicks in these latter ages, placed his City Norimberg six minutes more southerly than later observers have found it. But to give one Instance for all, the Latitude of Paris, a City that for Learned men and Mathematicians has at least equalled any other in the world, has been so doubtfull, that a learned man, Peter Petit, not very long since published a Dissertation to settle its true Latitude\* in which he tells the person who put him upon the work, He must in the first place inform him, that Authors and Geographers so widely disagreed in fixing the Latitude of that City, that if all their different opinions were to be number'd there might as many be reckoned as there are minutes between 47 and 49. And in the list he gives of those various opinions, we find that those two great men, Mersennus and Gassendus, tho' contemporaries, differed no less than 12 minutes. Roberwal and Henrion, Mathematicians of no small note, carried it the one 2 the other 3 minutes still further than Mersennus, that is no less than 15 minutes beyond what Mersennus in that age and at least half a dozen Astronomers of Credit had done in less than a Century before.

In short, such has been the variety in giving the Latitudes of the same places, that it has sometimes been called into question,† whether in succession of time both the Latitude and

\*Circa Latitudinem Lutetiae Parisiorum, de qua me rogas ut Scribam, id primo habeo dicendum, ita inter se discordes esse Autores et Geographos in illa assignanda ut si omnes diversa sententia ad calculum vocentur, tot eenseri possint quot a gradu 47 and 49 Scrupula interjacent. P. Petit in Libro Citado. Vid. Hevelij Podrum. Genani 1690, pa. 5.

The observers of that city have rendered its latitude so very doubtfull that even ye famous Sir Isaac Newton, so lately as in the two editions of his Principia has differed from himself five minutes; for in ye first edition, A. D. 1687, p. 425, he makes ye Latitude of Paris 48 deg. 45 min. but in his 2d edit. A. D. 1713, p. 382 he gives it 40 deg. 50 min. which must be wholly owing to the uncertainty of the observations made there, which being long since their Royal Academy of Science was founded in Paris is somewhat strange.

†Vid Hevelium in loco citato et ab eo Petr. Petitum in Dissertatione de Latit. Parisensi, pa. 26-27.

Obliquity of the Ecliptick did not vary as well as the Equinoctial points and other nodes with the Aphelia, &c.

Nor is it strange there should be a variety in these cases, 'tis difficult for human skill to arrive at a sufficient exactness in Instruments on which the whole depends. But farther, in observations by the Sun (by which all in these parts have been made) there can be nothing fully certain. Copernicus and Tycho differed 3 minutes in the Obliquity of the Ecliptick, and both of them from later Astronomers, yet on this depends the Declination, and it is not in the compass of Human Power to be certain of the Sun's Eccentricity on which the Equation of his place depends. And not to mention any thing of Ptolemy's, the Alphonsine or the Ffriscan Tables, the Rudolphine, which have long been in the greatest repute being built by the most ingenious Kepler on Tycho's laborate observations will make his place differ at any distance from the Line of the Apses at least 8 or 10 minutes from what some later Tables that pretend to great exactness will make it. And from something of this kind by a mistake in the Sun's Declination only, it was, that in the last observations mentioned to be made by the Artists employ'd by the Lord Baltimore's agent, those persons committed an error of several minutes which was offered to be indisputably proved to them at the hazard of above £50 sterl. but they thought not fitt to accept it; which offer was made them only to shew how slender a Title they had to their pretended exactness, when they err'd so much only in the declination, and not that it was imagined such observation could be of weight in the dispute, for that, 'tis hoped, has been cleared up on another bottom. Without any further observation they will begin at Watkins point, tho' Virginia is shortened by it no less than 22 miles, of what was formerly understood to be the length of that Colony by the Latitude of places. Since therefore notwithstanding this change of the Imaginary Lines above them, they enjoy the very same spott of Ground to the full extent of what was intended to be granted, with the same Soil, Waters and Conveniences, they ought not certainly on any new discoveries of the Latitude, whether real or pretended, expect any more, especially when it is to break in on another Royal Grant, and so be torn from their honest neighbours, who settled on so solid a foundation as a Royal Charter from the Crown.

This Boundary between the provinces being thus stated, It now remains to speak to that other point in difference, viz. the Title to those called the *Three Lower Counties*, or that Tract of Land which lies on the *Western Shore of Delaware River and Bay*, from 12 miles above Newcastle Town to the Cape, &c. which Tract being divided into the Counties of Newcastle, Kent, and Sussex, has ever since the year 1682 been in possession of William Penn, Esq. and was united to the province of Pensilvania by an agreement between the people of both, then fallen under the same Proprietor and Government; that they were for many years together of the same Assembly for Legislation. And by the Royal approbation continue under the same Government to this day. Notwithstanding which and that it was never in the possession or under the government of Maryland, yet the Lord Baltimore and his agents still continue to make some claim to it. But how reasonably will appear.

That so much of that Tract as lies south of the Northern Boundary of Maryland is included within the bounds of that province, as described in their patent, is not to be contested. And yet in reality it is not within the Grant, for that begins thus "Charles by the grace of God, &c.—To all whom these present shall come, Greeting: Whereas our right Trusty and well beloved subject, Cœlius Calvert, Baron of Baltimore in our Kingdom of Ireland, son and heir of Sir George Calvert late Baron of Baltimore in the same kingdom of Ireland, pursuing his father's intentions, being excited with a laudable and pious zeal for the propagation of the Christian faith, and enlargement of our empire and dominion, hath humbly besought leave of us by his Industry & Charge to transport an ample Colony of the English nation unto a certain countrey hereafter described in the parts of America, *not yet cultivated and planted*, tho' in some parts thereof inhabited by a certain barbarous people having no knowledge of Almighty God," &c. Here the petition recited in the Grant itself was for a countrey not then planted by any but the savage Indians; and whether this Land on Delaware were such or not will appear from this account of Nieu Nederlandt, given by Doct. Heylin in his *Cosmography*, the first editions of which were prior to the date of Maryland patent. His words are these—"Novum Belgium or Nieu Nederlandt hath on the North East, New England, on the South



West, Virginia, specially so called. So named from the Netherlanders, who began their Plantation in it Anno 1614, the countrey being then void, and consequently open to the next pretender, according to that maxime in the Civil Law, *Que nullius sunt in bonus, dantur occupanti*. And yet they had some better Title to it than bare Intrusion, having bought Hudson's Charts and Maps, and otherwise contented him for the charge and pains of his discovery Anno 1609." \*

This countrey he places between the Latitude of  $38^{\circ} 30'$ , and  $41^{\circ} 15'$  and pursuing his account of it names only the two most noted Rivers of it, viz. Noord (or the North) River, now called Hudson's, near which they built Fort Orange and the town New Amstel, now the Fort and City of New York, and the Zuyd (or South) River, now called Delaware. On this latter, at the mouth of the Bay, the Dutch very early built the Town of Whoor-kill, so called by the common people to this day. And at the head of the Bay the ffort and Town of Sandshook, now called Newcastle, and peopled the Lands not only between those two towns on the West of Delaware Bay, but also those above Newcastle. Some time after, in the reign of Christianna, Queen of Sweden, that nation, viz. the Swedes, sent a small colony into Delaware, who seated higher up the River, but they soon became a part of the Dutch government.

In the possession of all those Lands, viz. from Long Island to the Western side of Delaware Bay, inclusive, the Dutch continued peaceably till the year 1665, when a Warr breaking out between England and Holland, and King Charles ye 2d, having first granted this whole countrey to his brother the Duke of York, upon a very old claim the English had to it, on pretence that Hudson who made these discoveries was a subject of the crown of England (though he was then a private adventurer, and therefore thought he had a right to sell the fruits of his labours.) These Lands were in this War taken from ye Dutch by an English Squadron, part of which attacked New Amstel

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\* Should any object that Dr. Heylin in another part of the same Discourse endeavours to assert the English Right to all these Lands. This is only, if the writer mistakes not, in his latter editions to make good that hardy undertaking he values himself upon in pa. 3, col. 1, of his preface, where he professes to doe the same for the Title of the Kings of England to frame the vassalage of Scotland, England's Right to Guiana, the Cape of Good Hope, and other places.

to the North, and another part entered the South River or Delaware, and made a conquest of both together. And thus the whole came under the government of the Duke of York, till the next War with Holland, in which the Dutch retook it from the English, and the English in a second attempt conquered it again from the Dutch, and at the ensuing treaty of peace a full cession of it was made by the Dutch in exchange for Surinam.

After this second conquest the Duke of York held both the Lands and Government of New-York in his own hands; governing by his own commissioned officers, till coming himself to the Throne it devolved to the crown. That part now called New Jersey, he had granted before to Sir George Carteret and the Lord Berkley, from whom all the proprietors of New Jersey derive their present Titles. But the province of Pennsylvania being granted by the King to Mr. Penn, the lower parts on the West of Delaware River and Bay, the Duke was pleased in the year 1682 to grant to the same proprietor by separate Deeds of Feoffment, by one the Town of Newcastle with a circle 12 miles round it, and by another all the rest of the Capes, &c., and King Charles the better to assure these Lands to the Duke, his brother, confirmed them by a particular patent dated about that time.

The Lord Baltimore, notwithstanding, judging this the time to make a push for these lands before their new proprietor William Penn should be settled in the peaceable possession of them then thought fit very strenuously to assert his claim, and not without an appearance of hostility, for not far back of New-castle town he erected a fort and kept it maned with soldiers and arms till by the order which hereafter follows he was obliged to relinquish, and his men to retire.

The dispute soon occasioned both proprietors to repair to England where in the year 1685 they had a hearing before the King and Council, the matter was referred for a more particular scrutiny to those lords of the Privy Council who then made up the board for trade and plantations where such proofs were produced from records in Holland, from old Dutch maps and prints and other substantial evidence, that this part of the country was actually seated by the Dutch before the grant of Maryland charter and therefore was not included in that grant, that the Lord Baltimore wholly lost the cause and the following order of the King in Council was read thereupon, viz:



At the Court at Whitehall, the 13th day Nov. 1685.

*Present*

The Kings most Excellent Majesty.

His R. H. Prince George,	Earl of Craven,
Lord Arch Bish of Cant,	Earl of Berkley,
Lord Chancellour,	Earl of Nottingham,
Lord Treasurer,	Earl of Plymouth,
Lord Privy Seal,	Earl of Murray,
Duke of Ormond,	Earl of Middleton,
Duke of Beaufort,	Lord Viscount Fauconberg,
Duke of Queensbury,	Lord Viscount Preston,
Lord Chamberlaine,	Lord Viscount Melfort,
Earl of Huntington,	Lord Bishop of London.
Earl of Bridgwater,	Lord Dartmouth,
Earl of Peterborough,	Lord Godolphin,
Earl of Sunderland,	Mr. Chan. of ye Exchequer.

The following report from the Right Honorable the Lords of the Committe for Trade and foreign plantations being this Day read at the Board.

The Lords of the Committe for Trade and Plantations having pursuant to his late Majesty's order in Council of the thirty-first of May, one thousand six hundred and eighty-three.—examined the matters in difference between the Lord Baltimore and William Penn, Esqr. *in behalf of his present majesty* concerning a tract of land in America commonly called Delaware, their Lordships find that the land intended to be granted to Lord Baltimore's patent was only land uncultivated and inhabited by savages, and that this tract of land now in dispute was inhabited and planted by Christians at and before the date of the Lord Baltimore's patent as it hath been ever since to this time and continued as a distinct colony from that of Maryland, so that their Lordships humbly offer opinion, that for avoiding further differences the tract of land lying between the river and bay of Delaware and the Eastern sea on the one side and Chesapeake bay on the other be divided into equal parts by a line from the latitude of Cape Henlopen the fortieth degree of north latitude and that one half thereof lying towards the bay of Delaware and the eastern sea be adjudged to belong to his Majesty, and that the other half remain to the Lord Baltimore as comprised within his charter. Council Chamber 7th November, 1685.

His Majesty well approving of the said report, it was thereupon ordered by his Majesty in Council that the said land be forthwith divided accordingly, whereof the said Lord Baltimore and William Penn, Esq., together with their respective officers and all others whom it may concern are to take notice and give due and ready obedience thereunto.

WM: BRIDGEMAN.

This order being full and decisive, the Lord Baltimore seemed at that time to be concluded by it without any further objection. He therefore, (as has been said) withdrew his men from the Fort he had built some miles from Newcastle. The inhabitants of all those parts held their lands quietly and unmolested by him and the King, besides his deed of feoffment given when Duke of York, having, as far as lay on his part, granted a new patent, (though having passed all the other offices it was delayed at the Great Seal) with ample power of government to the proprietor, William Penn, for the whole, the title to the soil (at least) of these counties remained undisputed till after three and twenty years, the same Lord Baltimore (from what instigation we know not) thought fit, in the year 1708, to petition the late Queen for a rehearing of that cause, upon which the matter being largely discoursed at the Council Board, the motion was entirely rejected, and the Lord Baltimore left as before, to be determined by the former order, from whence one would think, in justice, there should now be no appeal, as he presumed there can be no line now made in law, because of the antiquity of the possession; for, first, these lands have continued a distant colony, as they are called in the order, for near a hundred years, 'tis about fifty years since they came under the Duke of York's government, and about thirty-three years they have been under that of William Penn. The much greater part of the whole tract is seated upon titles derived from the several governments they have respectively been under, the validity of which is the only security the people have for their estates and improvements. After all, which, so manifestly contrary to right, to endeavor a subversion of all these titles and the long possession had thereupon, carries so evident an injustice with it that it cannot be apprehended any government whatsoever could countenance the attempt, much

less that of Great Britain, which is happy above all others in the tender regard always shown to the right of the subject.

Against all that has been advanced, the Lord Baltimore can have nothing to allege but that these lands lie within the description in his grant, and therefore, by the law, he ought to have them. But it has been shown that though they fall within that description, yet they are not in reality within the grant itself. Were it even otherwise, it would be no new or strange thing in America, in such a case, to be disappointed ; grants in these parts differ widely from those in Great Britain. There, lands granted are of a real value at the time, but in America 'tis little more than a license to transport a colony and to erect a government with all necessary powers within such limits, exclusive of other subjects. The land itself is the natives, and either always is or ought to be purchased of them, which is constantly observed in Pennsylvania and some adjacent colonies, in such case as far as the grantees from the crown pursue the design of the grant and extend their settlements ; these estates will doubtless, by such a possession and improvement, be as unquestionable in lands as those in Europe, but upon failure hereof there has been but little regard shown by the crown to former grants, most of the colonies of these parts being encroachments (if they may be so called) one upon another. The Province of Maryland itself, as well as many others, lies all within the bounds of the first grants for Virginia, New England, extended to the fortieth degree, as 'tis called and was so understood at the time of the grant for Maryland, as appears by express words in their patent, yet there have been divers other grants made from the crown within these bounds, which, to the southwest, include no less than all Connecticut, New York, New Jersey, and Pennsylvania. It should therefore seem that Maryland can have now no better right to the lands here discoursed of, viz., the lower counties on Delaware, than the government of New England had to those other provinces of New York, &c., to which, notwithstanding they have been more modest than to pretend, so that even that only argument that can be advanced by the Lord Baltimore will be found to have very little force in it.

Thus both the boundaries between Maryland and Pennsylvania, and the title to the lower counties, have been considered,

and from the arguments offered it will appear ('tis hoped) that the northern limits of Maryland should extend no higher, at most, than a parallel drawn from Newcastle or some place near it, and that the lower counties ought to be forthwith divided, pursuant to the directions of the King's orders in Council in 1685.

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**Lord Mansfield's State of the Case.**

“THE CASE OF THE PROPRIETORS AND PROVINCE OF PENNSYLVANIA AND THE THREE LOWER COUNTIES OF NEW CASTLE, KENT AND SUSSEX, ON DELAWARE, TO BE HEARD BEFORE THE RIGHT HONOURABLE THE LORDS OF THE COMMITTEE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL FOR PLANTATION-AFFAIRS AT THE COCKPIT, AT WHITEHALL, ON THURSDAY 23 FEBRUARY 1737”—By W. MURRAY.

*The case of Messieurs Penn, and the people of Pennsylvania, and the three lower counties of New Castle, Kent, and Sussex, on Delaware; in relation to a series of injuries and hostilities made upon them, for several years past, by Thomas Cressap, and others, by the direction and authority of the Deputy-Governor of Maryland.*

The President, the Council, and the Assembly of Pennsylvania, <sup>1736, Dec. 11.</sup> signed the Original Petition to his Majesty, complaining of a long series of injuries, born by them from Maryland; particularly of an invasion by three hundred men in arms from Maryland, in Sept. 1736, and of the murder and numerous disturbances committed by Thomas Cressap, so that he was taken up on the 24th November, 1736, and tho' they had sent proposals to the deputy governor of Maryland, to agree upon some bounds to limit jurisdiction, without prejudice to the right of either proprietor, till the difference should be absolutely settled, he had declined the same, and the injuries were not only continued, but increased; and praying His Majesty to enjoin the Lord Balti-

more, and all claiming authority under him, to desist from all further violences, and to confine himself to the bounds and limits set to his province, as well by his grandfather, about fifty years ago, as by himself, by his own solemn agreement of 10th May, 1732.

That original petition being referred to the Committee of Privy Council for plantation affairs, an order was made for Lord Baltimore to answer the same; and he was duly served with that petition and order.

1736, April 22.

He put an answer to that petition, and with regard to the grievous matters complained of in the petition which had happened in 1734, 1735, and May, September, and October, 1736. His Lordship contented himself with a very general answer, saying, he was thoroughly persuaded that every part of the petition which related to the Deputy Governor of Maryland, was without foundation.

In that answer Lord Baltimore insists, in the following words, which may be material to the present questions.

"I beg your Lordships permission humbly to insist upon it, that the true boundaries of Maryland are those, and those only, that are contained in the charter of Maryland, which being long prior to that of Pennsylvania; the boundaries in the Maryland grant cannot be affected by anything in the Pennsylvania grant, which is subject thereto. And I assure your Lordship that I neither know, or believe, that any of my ancestors ever set to themselves any other bounds, but those only which were limited for them by the said grant; and I am very well assured, that the people of Maryland have always, in making their settlements, kept within the bounds of the Maryland charter, and have not, in any one instance, exceeded the same, or encroached on the lands belonging to the province of Pennsylvania. But, notwithstanding what the President and Council are pleased to say to the contrary in the said petition, I will further beg leave to assure your Lordships, that the people of Pennsylvania, in making their settlements, have, from time to time, in many instances, and to a very great degree, made large encroachments on the province of Maryland."

That answer is replied to, and the truth thereof denied. And the matters of that petition, answer and reply, being the first



and original application, are now appointed to be heard. Long after which answer to the original petition.

A cross petition to his Majesty was first lodged in the office, <sup>June 1.</sup> from the Deputy Governor and Council of Maryland, complaining that some German and Palatine families, who had settled (as those petitioners pretended) under the Province of Maryland, had declared, they would become tenants to Pennsylvania; wherefore, they themselves state, that they sent up the sheriff, with some of the militia, to seize their persons for their misdemeanor; and that afterwards a sheriff of Pennsylvania had seized Thomas Cressap, on pretence of a murder he had committed, and that in seizing Cressap, somebody killed a man. And they prayed his Majesty's order for preservation of peace on their borders.

Another cross petition to his Majesty was lodged in the office, <sup>July 12.</sup> from the commissary and clergy of Maryland, setting forth, that an establishment had been made in 1702, for the maintenance of Church of England Ministers within Maryland, which the Quakers and other sectories, were dissatisfied at; and therefore they suppose, that the Quakers seduced some inhabitants of Maryland, to transfer the acknowledgement of the right of their lands, from Maryland to Pennsylvania—and then repeat the matter mentioned in the other Maryland petition, about the German settlers, and relating to Cressap, principally, to whom they give many titles, as a magistrate, officer, and tenant of Lord Baltimore, and a strenuous supporter of the religious and civil rights of the province of Maryland. And they pray his Majesty to stay the violent proceedings, which (they say) proceeded from the Pennsylvania government; and they go on and pray another distinct matter, namely, that a regular clergy may be encouraged to reside on the borders, and in the whole province of Pennsylvania.

The two matters contained in both the cross petitions are, first, An excuse offered for the attempt made by the three hundred men from Maryland, to turn the German settlers out of their settlements; and, secondly, a complaint that Cressap had been seized; which matters had happened on the sixth of September, and twenty-fifth of November before the June and July, when these cross petitions were first lodged.

An order in Council was made, *ex parte*, reciting or taking <sup>Aug. 18.</sup>



notice of the two petitions last mentioned only, whereby his Majesty was pleased, provisionally, and for the present, to order and command in the following words, viz.

“That the Governors of the respective provinces of Maryland and Pennsylvania, for the time being, do not, upon pain of incurring his Majesty’s highest displeasure, permit or suffer any tumults, riots, or other outrageous disorders, to be committed on the borders of their respective provinces; but that they do immediately put a stop thereto, and use their utmost endeavours, to preserve peace and good order amongst all his Majesty’s subjects under their government, inhabiting the said borders. And, as a means to preserve peace and tranquility on the said borders, his Majesty doth hereby enjoin the said governors, that *they do not make grants of any part of the lands in contest between the proprietors, respectively, nor of any part of the three lower counties, commonly called Newcastle, Kent, and Sussex, nor permit any person to settle there, or even to attempt to make a settlement thereon, till his Majesty’s pleasure shall be further signified. And his Majesty is further pleased to direct, that this order, together with duplicates thereof, be delivered to the proprietors of the said provinces, who are hereby required to transmit the same forthwith to the Governors of the said respective provinces accordingly.*”

1737. Nov. 1.

Messieurs John Penn, Thomas Penn, and Richard Penn, the proprietors of the province of Pennsylvania, and the three lower counties of Newcastle, Kent, and Sussex, presented their humble petition to his Majesty, stating the original petition which had come from Pennsylvania; and the due and personal notice that was instantly given thereof to Lord Baltimore, and that he had put in his answer to that petition; but that M. Penns had lately heard of the two cross petitions from Maryland, and that Lord Baltimore, without giving any notice whatever, had by surprise made some application, and obtained the said order of the 18th of August—and that these petitioners were very highly affected in their interest and property, by the order so obtained, which was intended to preserve peace, without injuring either side; and which order they apprehended would not have been made, had they had notice of Lord Baltimore’s application. And, as the said order was made only to continue till his Majesty’s pleasure should be further signified, they pray’d his Majesty to take the

premises into his consideration, and to make such order for their protection, and the quieting their tenants, as to his Majesty should seem meet.

Those four petitions come on now to be heard, in virtue of his Majesty's several references of the same.

And as Lord Baltimore, in his answer to the original petition, which came from Pennsylvania, has thought proper to insist, in most express terms, that the limits of his country are those, and those only, which are contained in his charter, which he insists cannot be affected by the subsequent charter for Pennsylvania; and as Lord Baltimore has insisted, that his people, in making their settlements, have always kept within the bounds of the Maryland charter, and have not, in any one instance, exceeded the same, or encroached on the lands belonging to the province of Pennsylvania. But that the people of Pennsylvania, in making their settlements, have from time to time, in many instances, and to a very great degree, made large encroachments on the province of Maryland—and as the cruelties hereafter complained of by Pennsylvania, might be, in some degree, alleviated, if done really within Maryland, or if done in a place about which there could be a pretence of doubt or uncertainty in which province the same were committed; but may require a very different consideration, if done in the very heart of Pennsylvania, where, by no possibility, there can be the least colour for doubt:

So he has made it absolutely necessary, in order to a right determination, for the original petitioners to take notice, with all imaginable brevity, of the grants and titles of the several proprietors of Maryland, Pennsylvania, and the Lower Counties.

And, without taking some notice of which, the very nature of the offences complained of, would not appear in their true and proper lights.

Adjoining to the main continent of America, there shoots out, southwards, into the sea, a very long narrow slip, or peninsula of land.

To stand at the bottom or southern point of it, in the sea, and there to look up the peninsula, the right hand or eastern side of this peninsula is bounded, first, by the sea or ocean, and, higher up, by Delaware bay—and the left hand, or western side of that

peninsula is bounded (for the whole length of it) by the great bay of Chesapeake.

These two bays of Chesapeake and Delaware, which lay on each side of the peninsula, draw in and close pretty near together, about the town of Newcastle, and there they form the neck or isthmus of the peninsula.

And, by that neck or isthmus, the peninsula adjoins to the main continent of America.

And, above that neck or isthmus, the two rivers Susquehanna and Delaware, which empty themselves respectively into the bays of Chesapeake and Delaware, diverge and expand, very widely from each other.

Any large map of America will shew this peninsula, but to avoid questions about the authority of particular maps, the Lord Baltimore's own map of the peninsula, which he insisted should be and was, annexed to his solemn agreement of the 10th of May 1732, will abundantly explain this matter.

In which map the black print alone is Lord Baltimore's map, and the red marks thereon describe other places, with regard to the present matters.

1692. June 20.

By letters patent of this date, reciting the petition of Cecilus Lord Baltimore for a certain country therein after described, not then cultivated and planted, though in some parts thereof inhabited by certain barbarous people, having no knowledge of Almighty God, his Majesty granted to the said Cecilus Lord Baltimore.

“All that part of a peninsula, lying, in the parts of America between the ocean on the east, and the bay of Chesapeake on the west, and divided from the other part thereof, by a right line drawn from the promontory or cape of land called Watkins Point, (situate in the aforesaid bay, near the river of Wigheo) on the west, unto the main ocean, on the east, and, between that bound on the south, unto that part of Delaware Bay on the north, which lyeth under the 40th degree of northerly latitude from the equinoctial, where New England ends; and all that tract of land between the bounds aforesaid; that is to say, passing from the aforesaid bay called Delaware bay, in a right line by the degree aforesaid, unto the true meridian of the first fountain of the river of Pattowmeek, and from thence tending towards the south, unto the further bank of the aforesaid river;

and following the west and south side thereof, unto a certain place called Cinquaek, situate near the mouth of the said river, where it falls into the bay of Chesapeake, and from thence by a straight line, unto the aforesaid promontory and place called Watkins Point."

King Charles the Second, granted a very large tract and seigniority in America unto the Duke of York in fee, namely the tract or province since called New York and New Jersey, and a very large tract therewith, and all lands, soils, rivers, and appurtenances thereto belonging. 1664. March 12.

The said king granted the same lands to the Duke of York in Fee. 1674. June 20.

The said king granted to Mr. Penn (the father of the present Mr. Penn) the province of Pennsylvania, which lies northward and behind Maryland, by the following description. 1680. March 4.

"All that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delaware river, from twelve miles distance northwards of Newcastle town, unto the 43d degree of northern latitude, if the said river doth extend so far northwards, but if the said river shall not extend so far northward, then, by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the 43°; the said lands to extend westwards 5 degrees in longitude, to be computed from the said eastern bounds—and the said lands to be bounded on the north by the beginning of the 43d degree of northern latitude; and on the south by a circle drawn at twelve miles distance from Newcastle, northwards and westwards unto the beginning of the 40th degree of northern latitude; and then, by a straight line westwards, to the limit of longitude above mentioned."

When Mr. Penn came to take possession of Pennsylvania, he found it lying backwards, and the passage up Delaware Bay, a place of very difficult and dangerous navigation, more especially in the winter season; but that, in passing up that bay, there were several safe and commodious harbors up the peninsula, and that that side of the peninsula which lay towards Delaware Bay was, as it ever had been since King Charles' grants to the Duke of York, in the Duke of York's possession; whereupon Mr. Penn applied to the Duke of York.

And the Duke of York not only released his pretensions to Pennsylvania, but also by two several indentures of feoffment, with livery and seisin, granted to Mr. Penn in Fee what is now called the three lower counties of Newcastle, Kent and Sussex, which make the door and entrance into Pennsylvania as follows :

1682. Aug. 24.

The said Duke of York, by one feoffment with livery and seisin, conveyed to Mr. Penn in Fee, "All that the town of Newcastle, otherwise called Delaware, and all that tract of land, lying within the compass or circle of 12 miles about the same, situate, lying and being upon the river Delaware in America ; and all islands in the said river Delaware, and the river and soil thereof, lying north of the southermost part of the said circle of 12 miles about the said town."

Aug. 24.

By another feoffment, with livery and seisin, the said Duke conveyed to Mr. Penn in Fee, "All that tract of Land upon Delaware river and bay, beginning 12 miles south from the town of Newcastle, otherwise called Delaware, and extending south to the Whore Kills, otherwise called Cape in Lopen."

In each of these feoffments the Duke appointed John Moll and Ephraim Harman his attorneys, to deliver possession and seisin—and in each of these feoffments he covenanted to make and procure further assurance of the premises.

Oct. 28.

Livery and Seisin were accordingly delivered, by the Duke's Attorney to Mr. Penn ; and not only so, but the Duke's Governor and Counsel at New York surrendered also the government of these granted parts, and discharged the magistrates of any further obedience to the Duke of York.

And from that hour to this, Mr. Penn and his family have been in the constant possession, not only of Pennsylvania, but of the said three lower counties also, which were at that time called Delaware.

Mar. 22.

As the Duke had covenanted for further assurance, so, in a very few months after his grants to Mr. Penn, he obtained further letters patent from King Charles the Second in fee, of the very lands now called the Three Lower Counties, and delivered the same to Mr. Penn the grantee and feoffee under him.

1683, 1684, 1685.

The then Lord Baltimore applied to his majesty in Council, and had more *than a dozen* hearings before the Committee for Trade and Plantations (which at that time was composed of the Lords of the Privy Council) at which he set up a claim to the

Three Lower Counties under his charter, or to some part thereof, but it was answered by the Duke of York and Mr. Penn, That the former Lord Baltimore had expressly petitioned for, and upon that petition, the crown had granted to him, a tract not cultivated or inhabited by Christians, whereas Delaware was in fact cultivated and inhabited by Christians, at and before the date of the charter to Lord Baltimore.

The Lord Baltimore being aware of the force of that objection, endeavoured to evade it, by producing a paper which he called a Report or Order of Council of the 4th of April 1638 (within six years after the date of his charter) whereby, as it was pretended, though one Claborne was possessed of an island in the middle of the Chesapeake Bay, called the Isle of Kent, yet the right thereto was said to be in Lord Baltimore, as being within the bounds of his patent.

This paper being produced to the committee, which happened 1685. Oct. 8. to consist of almost all the great officers of state, they put off the affair, to give Lord Baltimore time to produce an attested copy of such report.

But at another subsequent committee, he declared he could Oct. 17. not find the original whereby an attested copy might be produced.

It is observable that the Council Registers of that time, and of that very day, are extant; but after careful search no such report or order is found therein.

The Lords made a report, and

*A final Order in Council was made; reciting, That the Lords of the Committee had examined the matters in difference concerning a tract of land called Delaware, and found that the land intended to be granted by the Lord Baltimore's patent, was only land uncultivated and inhabited by savages, and that the tract of land then in dispute, was inhabited and planted by Christians at and before the Lord Baltimore's patent, as it had been ever since to that time, and continued as a distinct colony from that of Maryland; so that the lords of the committee offered their opinion, That, for avoiding further differences, the tract of land, lying between the river and the eastern sea on the one side, and Chesapeake Bay on the other, should be divided into equal parts, by a line from the latitude of Cape Hinlopen to the 40th degree of northern latitude; and that one half thereof, lying towards the*

Nov. 7.

13.



*Bay of Delaware and the eastern sea, should be adjudged to belong to his Majesty, and that the other half should remain to the Lord Baltimore, as comprised within his charter; which report his Majesty in Council approved of, and Ordered, that the said lands should be forthwith divided, accordingly; whereof the Lord Baltimore and Mr. Penn were to take notice, and give due obedience.*

*Note*—The division, thereby directed, so easy and natural as it seemed to be, and although directed so long since as in 1685, and again in 1709, could never be exactly described, till by agreement between the present Mr. Penn and Lord Baltimore on the 10th day of May, 1732.

*While that long dispute was pending here in council, about the three lower counties on Delaware, the Lord Baltimore and his agents took that opportunity, before Pennsylvania was much settled, about the year 1683, to make a claim to a head or north bound for Maryland; and in order thereto, colonel Talbot his Governor, got up into the woods, and run a line, without notice to any one, from Octorara creek across a part of the country, three or four miles within the main continent itself, and marked some trees in that line which are still remaining, and that line is called the Octorara line.*

1708. Jan. 9. But as soon as the line was marked, he retired again, and never possessed the same.

The same Lord Baltimore, who had so many hearings in 1683, 1684, and 1685, after twenty-three years acquiescence, under the final order of Council of 1685, made about Delaware, petitioned Queen Anne in Council, and suggested it had been made, without any sort of notice to him.

Jan. 27. Mr. Penn petitioned the Queen, suggesting that the said old order was to be final, and that the Lord Baltimore had been many times heard before that order was made, wherefore Mr. Penn prayed, And

By Order in Council, the late Queen dismissed the said Lord Baltimore's petition.

1709. May 19. The Lord Baltimore did not rest satisfied, but again petitioned the Queen in Council, and said, in contradiction to what Mr. Penn alleged, that he the said Lord Baltimore had never had any notice whatever of that order.

This procured him a hearing before the Queen herself in Council. And

By order in Council it was declared, that it appeared by authentic copies of proceedings at that Board, that as well the Lord Baltimore, as Mr. Penn, had been divers times heard, before making the said Order of 1685. Therefore *her Majesty in Council ordered the Lord Baltimore's petition to be dismissed, and that the said Order in Council of 13th Nov. 1685, be ratified and confirmed in all its points, and should be put in execution without any further delay.* June 23.

The Earl of Sutherland petitioned his late Majesty to give him a charter for the three lower counties, which he suggested belonged to the crown for want of some nicety or formality in Mr. Penn's title, and that petition was referred to the attorney and solicitor-general. 1716.

Sir Edward Northey and Sir William Thompson, then attorney and solicitor-general, reported to his Majesty, that they had given notice of that petition to Mr. Penn and to Lord Baltimore, who severally claimed title to the said lower counties; and then they stated some parts only of Mr. Penn's title and possession, and that Mr. Penn's agents presumed there might be other grants to the Duke of York, of which Mr. Penn might give an account, but could not then, being under a lunacy. But as to the title claimed by Lord Baltimore, they reported in express terms, that that had already received a full and final determination by the order in Council of 13th Nov. 1685, which was also confirmed by the other order in council of 23d June, 1709. 1717. Oct. 21.

Mr. Penn, the original grantee, died, leaving his widow his executrix, and all of his children infants. 1718.

Sir William Keith, then deputy governor of Pennsylvania, by a warrant dated at Conestogo, recites a treaty made with the Indians two days before, whereby they had desired him to cause a large tract upon the Susquehanna to be surveyed and located, right against their towns, for the proprietor's use only, because from him, they should always be sure to obtain what land was necessary for them; therefore, ordering colonel French, Worley, and Mitchel to cross the Susquehanna river, and survey and locate about 70,000 acres, in the name and for the use of Springett Penn, to be called the Manor of Springettsbury, beginning upon the South West bank of Susquehanna, over against the mouth 1722. June 18.

of Conestogo creek, and to run such line and distances as the warrant mentions, and make a return thereof; which the surveyors accordingly did.

*Note*—Every part whatsoever, even the most southern and lowest parts of that manor, appear to be above fifteen miles within the main continent, above twelve miles more north than that private line which was run by Lord Baltimore in 1683, and more than ten miles above what Mr. Penn lately granted to Lord Baltimore in 1732.

1723. Feb. 17.

It is admitted on both sides, that an agreement was made between the present Lord Baltimore and Mrs. Penn, the executrix, that, for avoiding all manner of contention or differences between the inhabitants of the said provinces, no person or persons should be disturbed or molested in their possessions, on either side, nor any lands be surveyed, taken up, or pretended on either side—Such agreement to continue for the space of eighteen months, in which time it was hoped, the boundaries would be settled, and in the mean time that agreement was to be (and was) noticed by Proclamation in the respective provinces.

1727. Sept. 14  
and 15.

A great number of Germans or Palatines went from Holland to Pennsylvania; on which occasion the Governor and Council of Pennsylvania resolved, that they should sign a declaration of their allegiance and subjection to the king, their fidelity to the proprietary, and that they would demean themselves peaceably towards all his majesty's subjects, and conform to the laws of England and Pennsylvania; and accordingly such a declaration was drawn up, and signed by them.

1728.

And several persons, particularly Michael Tanner, Edward Parnell, Paul Williams, and Jefferey Somerford, in the year 1728, and for several years before dwelt upon several tracts of land within Chester County, in the Province of Pennsylvania, lying on the west side of Susquehanna; so high up in the main continent as to be four miles more north than the city of Philadelphia itself.

1728. May.

The Indians, at a treaty, who had not (at that time) released their possession, applied to Major Gordon, the Governor of Pennsylvania, and requested him that Parnell, Williams, and Summerford, might be removed from their settlements; for that, by the former treaty (with Sir William Keith) it had been

agreed that those parts were to remain unsettled by the Christians for the benefit of the Indians hunting and planting.

And in the latter end of 1728, Parnell, Williams, and Summerford were removed, by order of the Pennsylvania government, and their places left vacant for the use of the said Indians.

Since that time the Pennsylvania government have, in this case, as in every other, for great and truly valuable considerations, purchased off the Indian claims.

An act of Assembly was passed in Pennsylvania for erecting the upper parts of Chester county into a distinct county, called Lancaster, and appointing magistrates and officers therein for keeping the peace and administering justice, and distinct county courts for the same. 1729. May 10.

And those lands on which Parnell, Williams, and Summerford dwelt, and of which the person who will be very often named, Thomas Cressap, afterwards took possession and lived upon, by force of arms, fell into the county of Lancaster.

In the beginning of the year 1729, John Hendricks and James Hendricks Junior, and several others, by authority from Pennsylvania, went and settled on the west side of Susquehanna, about three miles still more north than that place from whence Parnell, Williams, and Summerford had been removed as aforesaid. And about the same time, several other persons settled back from that river south-westerly from John and James Hendricks, on and about a branch of the river called Codorus creek, to the distance of ten or twelve miles.

All the inhabitants within the compass of twelve miles south-westerly from thence, paid taxes in the new and upper county of Lancaster. 1731.

James Hendricks having the consent of the Indians, went to settle on part of those lands from whence Parnell, Williams, and Summerford had been removed, but as he was going to view the lands and fix on a place to build his house, his gun accidentally went off and shot his son, and the Coroner of Lancaster county held an inquisition thereon, and that accident prevented Hendricks from settling. And the same coroner held another inquisition there, on the murder of a bastard child. 1731.

And some time after that Thomas Cressap came and settled on that land on which Parnell formerly lived.

And some time afterwards pretended to have a right from Maryland.

And none of the inhabitants in or near those parts, pretended to hold their lands by any other right but that of the proprietors of Pennsylvania, but paid taxes, did duty, and served offices to Lancaster county.

Except as to Thomas Cressap and three or four more of his associates, who held the lands they were settled upon, and from whence Parnell, Williams, and Summerford had been removed, by force of arms and strong hand.

1731. May and June.

The Lord Baltimore in his present answer insists, that he granted a title to Cressap, in the year 1728, which the original petitioners are no ways aware of.

While these matters were passing in Pennsylvania, Lord Baltimore sent a message to Mr. Penns, to desire they might meet to settle their bounds, which proposal was most readily accepted, and many meetings had thereon.

But Mr. Penns not readily agreeing (at that time) to Lord Baltimore's very great demands, which extended up to the top of the peninsula, and even six or seven miles beyond the whole peninsula, within the main continent itself, the agreement was broke off.

July 1.

Lord Baltimore petitioned his Majesty to order the Pennsylvania proprietors forthwith to join with him in settling and ascertaining the said boundaries, and in case they refused, or that it should not be done within twelve months, that then his majesty would please to hear the matter in dispute, and make a determination therein.

That petition produced new meetings and treaties between the proprietors.

And on the 22d of the same month, the Lord Baltimore drew out with his own hand, and ordered a copy to be given to Mr. Penns, of his own terms and proposals, which were at length yielded to by Mr. Penns, in every single instance whatever; so very desirous were they to purchase, at any rate almost, what they had long wished to enjoy, a settlement of all manner of contest between them.

July 22.

An agreement at full length was prepared, exactly founded on such his own proposals, and the draught was near ten months under the consideration of Lord Baltimore, his council, solicitor,

mathematician, deputy-governor, and agents, and at length was solemnly executed, with his own plan graved on the same skins of parchment whereon the agreement was executed.

By the agreement which bore date 10th May, 1732, several 1732. May 10. lines, but two principal and material ones, were directed to be run and marked out as their respective bounds, before the 25th of December, 1733.

One of these principal lines was, to run up the middle of the peninsula in order to divide Maryland from the three lower counties.

And the other principal line was to be his Lordship's head, or north bounds, to divide Maryland from the Province of Pennsylvania.

The line which was to run up the middle of the Peninsula, was expressly agreed by the articles to touch or make a tangent to the western part of the circle of Newcastle town, and the place where that circle was to be run, was described in the following words :

“That there shall be *the said circle mentioned in the said Charter for Pennsylvania and deed of bargain and sale or feoffment of Newcastle*, (or so much thereof as is requisite) drawn and marked out at the twelve miles distance from the town of Newcastle, which twelve miles shall be twelve English statute miles.”

The other line, which was to divide Maryland from Pennsylvania, was to be a due west line to run across Susquehanna river, and to come down so low, as to be fifteen miles due south, or below the most southern part of the city of Philadelphia.

Which line, upon a careful survey, is found to grant to Lord Baltimore, not only up to the top and highest part of the peninsula (to the middle part only of which peninsula his charter before extended) but also to grant to him the lands up within the main continent itself, not only as far as his grandfather had claimed in 1683, but near two miles further up into the main continent than that.

And the Lord Baltimore, by that agreement, released to Mr. Penns, in fee, the three lower counties by express name, and all other the lands, on their side of those lines ; and Mr. Penns, reciprocally, released to him all lands on his side of those lines.

And Lord Baltimore released not only the lands as aforesaid, but also all his claims and pretensions to the same, and covenan-



ted to make further assurance thereof; and also to support the interest of Mess. Penns, in, and to the same, by all the means in his power.

Those articles also contained agreements for appointing commissioners, on both sides, to run those lines, and a proviso in the following words:

"That in case a sufficient quorum of the commissioners to be named on either side, shall not, from time to time, according to the appointments and adjournments to be made for that purpose, attend to proceed in the marking and running out the lines and bounds aforesaid, for want whereof, the same cannot be done within the time limited, then this present agreement, and every article and thing herein contained, shall cease, determine, and be utterly void. And then, and in such case, the party or parties, whose commissioners shall make such default, his or their heirs, executors, or administrators, shall and will forfeit and pay to the other party or parties, whose commissioners shall attend, his or their executors, or administrators, upon demand, the sum of £5000 of lawful money of Great Britain."

May 12.

Commissioners were appointed on both sides.

1733. Nov. 24.

Those commissioners, on both sides, signed a parting minute, setting forth numbers of meetings which they had had, and particularly that they had been in continual debate for eleven days past, and each side continued to persist in their former opinion; that is, the Pennsylvania commissioners insisted as they always had done, in running out so much of the circle as should be requisite, at the distance of twelve English statute miles from the town of Newcastle, as by the second article of the said agreement was directed. And the Maryland commissioners on their part insisted, as at former meetings they had done, upon running a circle, or so much thereof as should be requisite, whose periphery or circumference was twelve miles only; or whose diameter was somewhat less than four miles, as the only circle meant in the feoffment of New Castle, and as the only circle intended by the proprietors in the said articles.—And that, under this difference of judgment, the Maryland commissioners were of opinion, no other consequence could arise, than either, that the commissioners should continue together till the twenty-fifth of December then next, without running the circle, or else depart

without further adjournment; wherefore they agreed, to depart without further adjournment.

And so the lines were not actually run out; but that happened, not for want of attendance by the commissioners, whereby the same could not be done, so to make these articles void, but from a very strange pretended difference of opinion by the Maryland commissioners, (where there could be no real doubt) whether by the express words in the articles, whereby the circle was to be drawn at 12 miles distance from the town, which twelve miles should be twelve English statute miles, the proprietors really meant twelve miles, as they had clearly expressed, or something less than two miles distance from the town?

As soon as Christmas, 1733, the time for running the lines agreed on by those articles, expired, the disturbances now complained of begun, by that very turbulent person Thomas Cressap.

An inquisition was taken before the coroner in the township <sup>Feb. 13,</sup> of Hempfeild, in the county of Lancaster in the province of Pennsylvania, on the body of Knowles Daunt, then lying dead, whereby the coroner's inquest found, that at Hempfeild aforesaid, Thomas Cressap, with force and arms, on the twenty-ninth of January then last, with one hand gun with powder and long shot loaded, on purpose toward the said Daunt held and presented, did discharge; and shot the said Daunt and mortally wounded him, whereof he immediately languished until the twelfth of February then instant, on the evening of which day he died. And so the jurors, on their qualifications said, That the said Thomas Cressap, the said Daunt feloniously did murder, in manner aforesaid, against the peace, &c.

Cressap having first got his possession, as the original petitioners say in 1731, but as Lord Baltimore says in 1728, and having kept his possession by force of arms and strong hand, and having begun to embrace his hands in blood, contrived how to secure himself from the undoubted jurisdiction of Pennsylvania.

In order whereto, he, by fair promises of grants from the Maryland government, exemption from taxes, and other such like, (which never were in any sort performed) and also by force and threatenings to turn the German settlers out of their settlements and ruin them, did prevail on a very few of his neighbors,

so far only to acknowledge the Maryland jurisdiction, as for a short time only, to decline their rates to Pennsylvania; and some of the poor German settlers (who were unacquainted with the exact bounds of the provinces) were thereupon seduced to think themselves, for a short time only, within Maryland; being compelled thereto, in order to prevent the ruin threatened upon them by Cressap.

Which the people of Pennsylvania peaceably submitted to, and made no forcible opposition thereto. And this opportunity was taken by Mr. Ogle, Deputy Governor of Maryland under Lord Baltimore, to ride up into that neighborhood in his own person, and forward such attempt of Cressap's, in order thereby to enlarge the bounds of Maryland, by promising those German settlers (what he never performed) sufficient grants for their lands.

But as he knew how extravagantly far those settlements were up within the main continent, more northerly than even the city of Philadelphia; and beyond all possibility or colour of Maryland claim, the witnesses swear, they never could obtain any patent, certificate or survey, or even a warrant from the said Mr. Ogle, or any under his authority, but nevertheless Cressap extorted from divers inhabitants several sums to a considerable value.

1731. May 14. Major Gordon, then Governor of Pennsylvania, sent to Mr. Ogle the Deputy Governor of Maryland, a letter, and two commissioners authorized by the great seal of the province, complaining heavily that two persons, John Hendricks and Joshua Minshall, who had been seized and carried off their plantations several miles above Conestogo, were, notwithstanding his former complaint of that matter to Mr. Ogle, continued prisoners in the public gaol in Annapolis in Maryland; and that as a correspondence by letters might delay the matter, he therefore had sent up those two commissioners, duly authorized to treat on the subject of establishing peace on the mutual borders; and hoped for his ready concurrence in agreeing on such just measures as might effectually secure the peace of the people, till such times as the lines should be run, and the bounds indisputably fixed, or at least till such time as his Majesty could be applied to, and his pleasure known.

May 22.

Accordingly a formal demand in writing was made by those

commissioners. Mr. Ogle, by a written answer, resolved the whole into this point, That those two commissioners should join with him in a petition to his Majesty to determine and fix the bounds.

They told him, in writing, they were willing to agree on any reasonable bounds, for limiting the present jurisdiction, without prejudice to the right of the proprietors, and that they were well assured the Pennsylvania government would join in a representation to his Majesty. May 23, 24.

Which expression he took advantage of, and told them, in writing, he was sorry they the commissioners did not think themselves authorized to join with him in such a representation but hoped they would receive more ample powers, when they returned to Pennsylvania. May 25.

And the Pennsylvania commissioners thereon told him, in writing, that measures might be taken for preventing disturbances, without any representation to his Majesty ; and that it would be most proper for the proprietors, or their governors, to join in any such representation ; but yet, rather than the good work of restoring peace should be delayed, they were ready, at the same time that they agreed on a reasonable boundary for limiting the jurisdiction, to join with him in a representation to his Majesty, of the uncertainty of the present boundaries, occasioned by not executing the agreement. May 27.

And the Pennsylvania commissioners delivered a written protest to him, and declared they would represent to his Majesty their great sufferings under those public abuses, and implore his interposition. May 30.

Mr. Thomas Penn being in Pennsylvania, Mr. John Penn, the eldest brother, went thither also, to endeavor (if possible) to prevent or put an end to, any disturbances which might arise, from the lines having been run. Ju'y.

Lord Baltimore petitioned his Majesty in Council, praying his Majesty to give him a confirmatory grant of the lands within the bounds of his patent, without the restriction of *hactenus inculta*. Aug. 8.

The petition being referred to the Lords of trade, came on to be heard there, in the absence of both the eldest brothers of Mr. Penn, who were then, with their titles and evidences, in America ; and no person in England had either authority or

instructions to make a proper defence for them, and the Lords of trade made a report thereon.

1733. May 16.

But the several petitions have been presented to his Majesty, as well on the behalf of the absent Mr. Penns, as of the people settled in those countries, (in which petitions the agreement between the proprietors made in May, 1732, was disclosed to his Majesty :) Thereupon his Majesty, after a report from the right honourable the Lords of the Committee, by his royal order in council, of this date, was pleased to order, "That the consideration of the said report and petition be adjourned, until the end of Michaelmas term next; that the said John, Thomas, and Richard Penn, may have an opportunity to proceed in a Court of Equity, to obtain relief upon the said articles so insisted upon by them, according as they shall be advised. And his Majesty doth hereby further order, that after the expiration of the said time, either party be at liberty to apply to the Committee of Council for Plantation Affairs, as the nature of the case may require."

June 21.

Messrs. Penns instantly (in a month's time) filed a very long bill in the High Court of Chancery, against Lord Baltimore, for a specific performance of those articles, and for relief in many respects, which is still depending.

Since the said order, the following matters have from time to time, and almost continually happened; wherefore the people in Pennsylvania conceived it their duty humbly to complain of, and represent them to his most sacred Majesty, and to pray his Majesty to enjoin the Lord Baltimore, and all others claiming authority under him, to desist from all further acts of violence to the people of Pennsylvania; and that he do confine himself to the bounds and limits set to his province, as well by his grandfather as himself, until the same shall be determined by due course of law, and for general relief.

1733. July.

John Wright, Esq. a Justice of Peace in Lancaster county, having sowed a field of wheat, on the west side of Susquehannah river, opposite to the plantation where he lived on the east side of the same, about 7 or 8 miles more northerly than the city of Philadelphia, he went with his servants in the beginning of this month to reap the same; but Thomas Cressap, with 20 persons, with guns, swords, pistols, and blunderbusses, and drums beating, came in a hostile manner, to the terror of the people, into

the field, with waggons, with intention to prevent Mr. Wright from reaping his field, and in order to carry off the grain; and Cressap presented a drawn sword in one hand, and a cocked pistol in the other, to Mr. Wright's breast. Upon which he commanded him to keep the peace at his peril, which had some weight with the company who were with Cressap; who, on their part seemed unwilling to proceed to hostilities; but he declared he was come to fight the Pennsylvanians, if they would think fit to engage.

The under sheriff of Lancaster county went to serve a writ Sept. 21. for debt, on one Lockman, 23 miles to the northward of the line, called the Octorara-line, run by the Lord Baltimore's grandfather, and having served the writ, was bringing the prisoner away. In about two or three miles, one Mark Evans met and asked the sheriff where he was carrying Lockman? He said to gaol, unless that he would give bail. Evans answered, he believed bail would be found, and instantly about 20 or 30 men on horseback, armed with cutlasses and clubs, fell upon the said sheriff and his assistants, in a most furious and violent manner, beat and grievously wounded them, and rescued Lockman, and the sheriff and his company were forced to fly; but the sheriff's horse failing him, he fell into their hands again, and four men at once beat him with heavy clubs, and most cruelly wounded him, so that he long lay in danger of his life. Several of the persons names who did this were Michael Risner, Francis Clapsdale, Christian Crowle, Barnard Wayman, Nicholas Kens, and Martin Schuts, who all lived on the west side of Susquehannah, not above one mile to the southward of Hendricks, and called themselves Marylanders. And they are known to be so; for one of those persons who rescued Lockman, had sometime before rescued Clapsdale, who was arrested for debt, by a writ from Lancaster county, and presented a gun at the sheriff, and told him they belonged to Maryland, and would not suffer any Pennsylvania officer to come over the river.

Thomas Cressap declared, that if the Maryland governor Oct. would allow him fifty men, he would go over into that part of Lancaster county lying on the east side of Susquehannah river, and would turn Samuel Blunston and the inhabitants of Dunnegal, out of their houses; and would pass through the province of Pennsylvania to Philadelphia, and Cressap desired



persons to request the Maryland governor to send some people to assist him therein.

Dec.

And by and by the Maryland governor did assist him, not with 50 men only, but with 300 men in arms for those purposes.

Cressap declared to other persons, in discourse about John Wright's building, and settling on the west side of Susquehannah, near and adjoining to John Hendrick's plantation, that Wright should not be suffered to live long in that place; for if the sheriff and officers of Maryland could not remove him, the said Cressap would burn his house over his head.

He further declared that, before he was six months older, he would build a fort, where John Wright's house stood, and would bring up cannon, and batter down the houses of some of the inhabitants in Lancaster county, on the east side of the river, and particularly Samuel Blunston's house, standing opposite to the said Wright's.

1735. May 6.

On this day, a Maryland surveyor, with his assistants, attended by Cressap, with about 20 men, armed with muskets, pistols, blunderbusses, and cutlasses, surveyed land along side the Susquehannah. They declared, they did it by Lord Baltimore's authority. The Pennsylvanians told them, that land had been surveyed long ago, and returned into the Pennsylvania Land Office. They said, they should not regard that. The Pennsylvanians asked them, why they brought all those armed men? They bid him to ask Cressap: They did so. And Cressap said, he had orders from Governor Ogle to raise the militia, and guard the surveyor from the Pennsylvanians. The Pennsylvania people asked, why they came so far north, beyond any of their usual pretensions, for that now they were got several miles north of Philadelphia; and told the surveyors, they themselves knew they were surveying lands in Pennsylvania. The surveyor answered, that was none of his business; he was to follow the Governor of Maryland's orders. Cressap, seeing more persons coming from Mr. Wright's house, ordered his trumpeter to sound, and his men to draw together, and stand to their arms, though none of the Pennsylvanians, who were come, or coming, had any arms at all, except one gentleman a hanger by his side. There came in to Cressap's assistance, ten or twelve more of Cressap's men, mostly armed, and insulted the Pennsylvanians;

and the surveyor and his company proceeded on that forcible survey.

Major Gordon, the late Governor of Pennsylvania died, Aug. 5. whereupon the invasions from Maryland became more terrible and more frequent.

About fifty or sixty persons, heads of the German families, Aug. 11. writ and subscribed a letter to Mr. Ogle, complaining of the oppressions they had met with from Maryland, different from the rest of the Maryland tenants, which made them conclude that the governor and magistrates of Maryland themselves did not believe them to be settled in their province, but that they had been seduced and made use of, first by promises, and then by threats and punishment, to answer purposes which were unjustifiable, and would end in their ruin; wherefore they, with many of their neighbors, being at last truly sensible of the wrong they had done the Pennsylvania proprietors, in settling on their lands without paying obedience to their government, did resolve to return to their duty, and live under the laws and government of Pennsylvania, in which they believed themselves seated; and that they would adhere to, till the contrary should be determined by a legal decision of the disputed bounds; and their honest and just intention they desired might be made known to the Maryland governor.

Two days afterwards, most of those persons, to the number of Aug. 13. forty-seven, signed and sent up a petition to Mr. Logan (who has been of the Pennsylvania Council about forty years, and who, by surviving his seniors, became eldest counsellor, and upon whom, not by any particular appointment, but by an act of assembly, actually confirmed by Q. Anne in Council, the Presidentship devolved on the late Governor's death) setting forth, that they had been deceived through their ignorance, to settle under Maryland; and particularly had been told that the river was the division, that they had been ill used, that they were now informed that not the river, but an east and west line across the river, must be the division, and observing that the people on the east side of the river, inhabitants of Pennsylvania, who lived much more southward than they, enjoyed their possessions peaceably, without any claim from Maryland, they saw they had been imposed upon, to answer some purposes from Maryland, and that they were not settled within that province, as made to

believe; from a sense whereof, and of the wrong they were doing to Pennsylvania, they resolved to return to their duty, and prayed the President to impute their late errors to their want of better information, and to receive them into the protection of the Pennsylvania laws and government, to which they promised all faithful obedience for the future.

1736. Aug 31.

Accordingly, upon this their own free request, they were received as tenants of Pennsylvania.

Governor Ogle writ to President Logan, and enclosed him a copy of what had been sent him (as above) by the German settlers, and insinuates, that though he is unwilling to believe the Pennsylvania government would support such a behaviour, yet he apprehends it must have took its rise from the encouragement and prevalency of some Magistrates of that government.

Whereupon the two principal agents who managed for all those persons, were examined before two justices, and solemnly declared that that return to Pennsylvania was made of the people's own mere motion and free will, without any previous persuasion, or threatening, or compulsion from the Magistrates, or any other person, to their knowledge, and that the said letter to the Maryland governor was writ at their own request.

Tho. Cressap declared that, in a few days, he expected a great many armed men from Maryland, to help him the said Cressap to make the people, living between John Wright's ferry and Codorus creek, prisoners, because they refused to acknowledge themselves Lord Baltimore's tenants, and that then and till then, he would waylay both the roads, in order to take them—he declared he would seize all the flats and canoes that belonged to Wright, that no person should come over the river to their assistance. He went out of doors, and returned with brimstone, which he declared was to make matches with, in order to dart upon the roof of John Wright's house, to set it on fire, in case the people should fly thither for shelter.

The militia of Maryland were raised, and mustered by Nathaniel Rigby, then lately made a colonel, for twelve hours, and the colonel and officers ordered the common soldiers, in the governor's name, to march; the men seemed unwilling, wherenpon Rigby upbraided them with want of duty to the governor's orders, and pricked off a number of men out of his company, and commanded them, under penalty of £50 a man, to meet on Fri-

day then next, with arms and twenty charges of powder and ball, each man, to march up Susquehanna; and Colonel Rigby declared, that if the Pennsylvania people should resist, and not submit to Maryland, the hardiest should fend off.

They went up from Maryland, and marched to Susquehanna, Sunday, Sep. 5. with drums beating and trumpets sounding, and mustered and exercised at Susquehanna, near to Cressap's house. The 300 men who so came up, blamed Cressap very much for the disturbances that had been in those parts, and said they were not obliged to fight with the Pennsylvanians in Cressap's behalf. He swore they were only afraid of their mother's calve skins, and that it was Lord Baltimore's right he was maintaining; and he disregarded them, for he had the Governor of Maryland's order for what he did. He frequently called Col. Hall, who commanded the 300 militia, a damned coward, for not suffering him to fire with a blunderbuss upon the Pennsylvania people, who were coming over the river in a flat. The militia cut leaden bars, and declared those were to shoot Pennsylvanians; upon company coming over the river in three flats, Cressap marched his men to the river in a body, and fired one blunderbuss. They seized two persons, Pattison and Wilkins, under pretence there was some proclamation, and £50 reward against them. They demanded other Dutch people, but were refused—and the Pennsylvania people resolved to stand on their defence, the militia divided, and one body went and took pewter and linen from some Dutch families, on pretence of public dues to the government of Maryland. And finding force and threatenings were ineffectual, the sheriff employed a person to go from house to house among the inhabitants, and acquaint them, if they would submit to Maryland, he would engage they should live free from taxes till the line should be run.

The President and council of Pennsylvania, issued a proclamation, commanding all persons to keep the peace. 1737. Sep. 17.

They wrote a serious letter to Mr. Ogle, remonstrating this s. p. 18. very great injury, declaring they knew nothing at all, nor had the least hand in advising or influencing the attornment of these Germans, but could obtain no sort of redress.

As soon as ever this affair was over, a new scheme was set on foot by the deputy governor and council of Maryland, by the Rev. Mr. Henderson, the first petitioner in the clergy's cross petition,

and by Thomas Cressap the great agent in all these troubles, still to get away those German settlements by force; and this scheme was to be attended even with more shocking circumstances and cruelties than the former.

The want of success in the former scheme had proceeded from their own militia, the common men in which, had too much humanity, and too little concern in the event to act heartily in it; therefore the new scheme was, to pick up a set of people from Ireland; and other new comers, who as yet had no settlement or lands of their own; and to promise them, if they would assist to drive out those Germans, they should have their cleared lands, and buildings, and improvements. And to make this the more horrid and barbarous, this scheme, to turn the poor Germans and their wives and children out of their houses and improvements, was to be executed as soon as the hard weather began, in the severe winters of North America where the cold is most intense.

Accordingly a number of men were picked up, and they were to petition, and did, by the help of Mr. Henderson, petition Gov. Ogle for lands, which if he would grant them, they promised to defend the same, and Lord Baltimore's right thereto, with their lives and fortunes, and Governor Ogle himself signed an order that 52 of them should have each of them 200 acres laid out; and Governor Ogle and his Council concerted and promised that the militia should go up, and meet those new petitioners, and give them possession of the lands; and arms were accordingly prepared for that scheme, and Cressap showed the persons who were to have those lands, the Germans houses, mills, settlements, and improvements.

The two Justices of the Superior Court of Pennsylvania issued out a warrant to the Sheriff of Lancaster county, reciting complaints made to them, that Cressap had murdered Dannt, and that Cressap stood charged with divers other high crimes and misdemeanours; therefore commanding in his majesty's name, (as they had divers times before commanded) the Sheriff to apprehend Cressap, and bring him before them, to be dealt with according to law.

Cressap gave out, that in the winter next coming, when the ice was in the river, a great number of armed men would come up from Maryland, and lie in the woods, near the Dutch inhab-



itants, and he the said Cressap, with ten armed men, would go from house to house, and take the masters of the families prisoners, and when they had as many as they could manage, they would carry them to the armed force in the woods, and return again, till he had taken all who would not submit to Maryland. And if any other inhabitants of Pennsylvania should come to their relief, the armed force who lay in the woods, would pursue, take, and carry them all prisoners to Maryland. And if any of the men fled from their houses, he would turn the women and children out of doors, and bring up other people from Maryland and place in their possessions, who should hold the same by force of arms for Lord Baltimore.

Cressap declared that he himself had advised the sheriff, when the 300 men came up before, to fire on the people in the boats crossing the river, but said that they were fools and cowards, and had done no good in coming up.

Cressap declared that the governor of Maryland had now sent up a great number of small arms, cannon, and ammunition, to Colonel Rigby's, to be conveyed to Cressap's, and that the sheriffs and officers were to be sent up in a little time, to dispossess and confine all the Dutch people on the West side of the river, south-westerly from John Hendricks, who would not submit to the Maryland government, and that the governor of Maryland had sent to Newcastle and Chester county for Irish people, who were to come up and be put in possession by the sheriff and officers of the Dutch people's possessions.

Cressap listed one man in his service at £15 a year, as his drummer, and to exercise his men, and promised to recommend him to the governor to make it worth 25 or £30 a year; and promised him to give him one of the Dutch people's plantation if he would help to dispossess them.

Cressap listed another man at £12 a year, to defend him, and to go on such enterprises against the Pennsylvanians, as Cressap should think proper.—Cressap's wife brought him news that Munday and Lect, two of the heads of those people, who petitioned for the Dutch people's lands, were taken with their papers, and with Governor Ogle's orders; and she proposed that if Cressap and Jacob would go over the river, one Mary Emerson should engage John Ross at a game at cards, and in the mean time Cressap should go in and seize and carry him away, and

Nov. 18 and 20.



Jacob swore he would be revenged of Mr. Ross, and would go over the water and shoot him; and Cressap told him he would not be a faithful servant unless he did it. Another of Cressap's men present, offered to go over with Jacob, and wait in the canoe while he committed the murder, and take him safely back; and Cressap added a promise of his freedom if he did it, and a discharge, with a pass to travel into Maryland, where (he said) the Pennsylvania men durst not follow him.

Nov. 22.

On this day Cressap sent down two men with four horses to Colonel Rigby's, for the arms and ammunition, and declared that he daily expected up about 150 men, who were to be by him conducted to the Dutch settlements, to take the people out of their houses in the night by force of arms, and carry them to Maryland, and that these people were to hold the said places by force of arms, as tenants to Lord Baltimore.

In all the foregoing instances the people of Pennsylvania have been passive, and have most peaceably submitted to these treatments; the only instance charged against them, wherein they are said to be active, is the apprehending Cressap upon a legal warrant, to answer for the murder he had committed, and for the other many disorders he had been guilty of; some only of which are before related, as nearly as possible in the very words of the proofs.

And it is most humbly submitted, whether in duty to his Majesty, and to themselves, they were not only justified in apprehending him, but bound to do it, and culpable if they had omitted to seize him.

Nov. 24.

Cressap was apprehended by the Sheriff of Lancaster county. And the circumstances of the taking him, are deposed by many witnesses to be as follows:

The sheriff was attended by 23 men; he went to Cressap's house early in the morning; he himself and others read the warrant for murder to Cressap, and in his hearing several times over. He several times required him to surrender peaceably. In answer thereto, Cressap swore he would never surrender till he was dead. He called for a dram of rum, and drank "Damnation to himself and all with him, if ever they surrendered." He swore he would kill all the Pennsylvanians before he would be taken. He would shoot the first of his own men who refused to fire at his command, or who offered to capitulate. Be-

fore any force or violence was offered, two blunderbusses with shot were fired from Cressap's house upon the sheriff and his assistants. Some of the sheriff's assistants were wounded thereby. The sheriff desired and entreated him to let his wife go out of the house, and the sheriff and his assistants would retire, but he refused. Crassap declared he had sent down to Maryland for arms, and expected 300 men by that time it should be night. Thereupon night coming on, some of the people, without the sheriff's consent, set fire to a shed near to the house, which was only rough round logs of wood, piled upon each other, and was very low, the roof being within reach; the sheriff endeavored to put it out. And then Cressap and his men rushed out, and fired upon the sheriff and his assistants, and wounded several. And his own man, Michael Risner by name, shot another of his own men, Laughlan Malone by name, and killed him, mistaking him for a Pennsylvanian.

*Note.*—In the Lord Baltimore's answer to the original petition, he insists here, that the Pennsylvanians killed the man, but his own deputy-governor and Council, on the spot, do not pretend anything like it; they themselves only say that a firing of guns ensued, whereby a man was killed, and the proofs say it was done in the manner, and by Cressap's own man, the person above related.

Immediately after Cressap's being seized, with Risner, he declared that if he was a prisoner in Lancaster town, they could not keep him long, for he would soon be relieved, and the town set on fire; and again declared that a body of men would soon be sent from Maryland, and burn Lancaster town to ashes, and that it was the Sheriff's best way to remove him from thence as soon as possible.

The two provincial judges, by their warrant, committed Cressap to the gaol of Pennsylvania county, till delivered by due course of law. Nov. 29.

Immediately thereupon, the President of Pennsylvania called Dec. 11. the Council and Assembly, and they together signed the present original petition to his Majesty, humbly informing him of these matters.

Three days afterwards, they informed a couple of agents, who were sent up from Maryland, that they had applied to his Majesty in this affair.

The two cross petitions from the deputy-governor and council, and from the commissary and clergy of Maryland, were for the first time, lodged in the Council Office, and were some time afterwards referred to the Lords of the Committee.

1737. June 1.

July 12.

The original petitioners beg leave to offer, that had one single attack been made upon them, though it had been ever so clearly within Pennsylvania—Or had many attacks been made upon them, but in such places as by any possibility there could have been any shadow for doubt which province they had been in ; in either of those cases, they would not have given his majesty and the lords this trouble.

But when these attacks are, for the first time, begun, after Lord Baltimore by his own agreement in 1732, had, for a most valuable consideration, precisely fixed his own bounds, and those much higher than were ever before claimed, and daily and frequently made, and in places beyond all possibility of doubt, in which province they were, are carried on by an army, and by fire and sword, and with such outrages, and if the Marylanders thought themselves at war in an enemy's country ;

It then became the duty of the President, Council, and Assembly of Pennsylvania, to represent the matters to his majesty.

Their original petition contains also their fears and apprehensions, that these violences would be still continued from Maryland, and, notwithstanding notice was given them on the fourteenth of December, 1736, that the Pennsylvanians had petitioned his majesty ; yet on the twenty-ninth of December, 1736, and in June and October, 1737, they have been carried on to a greater degree (if possible) than before. But as those matters are subsequent to the date of the first Pennsylvania petition, they are not stated at present.

It may be very necessary to observe as to the places where every one of these disturbances has been committed : and in domestic or foreign transactions, it would be scarcely practicable to give clear and satisfactory evidence, at this distance from the spot, of those facts ; but it is particularly fortunate that this case does not labour under any uncertainty in that respect, but is the most clear one in the whole world, and may be determined by those single points, which the Lord Baltimore so much insists on in his answer, viz. That his bounds are those of his own charter, and those only, and that his people have never, in any

one instance, exceeded those bounds; but that the people in Pennsylvania have, in many instances, and in a great degree, encroached on his said bounds.

Because his bounds end low, according to his charter, within the Peninsula, and these disturbances have all been committed very high and far up, within the main continent.

For the charter for Maryland grants only (as to this purpose) a part of a peninsula, and supposing that was to have been the very highest part of all the peninsula (which it is not) even in that case, every one of these disturbances have happened in no part at all of the peninsula, but far up within the main continent, and so far within it, as twenty-five miles above, and more north than the whole and every part whatsoever of the peninsula, and many of them a great many miles more north even than the city of Philadelphia.

These matters therefore would be twenty-five miles at least out of his bounds, if the whole and every part of the peninsula, had been granted to him; which removes his bounds from the scene of these disturbances made by his deputy-governor and Cressap, full fifty-seven miles, over and above the twenty-five miles. For such part of the peninsula as is granted to him, is such part of the peninsula as lies between the ocean, on the east, and the bay of Chesapeake on the west; and that is the middle part only of the peninsula, and removes his bounds at least eighty-two miles below the place where these disturbances were committed.

It is also to be observed, that the place where the very lowest of these disturbances was committed by Maryland, is so far north, as to be nineteen miles and a half above the line claimed by the Lord Baltimore himself in 1683, and above seventeen miles and a half upon an exact measurement, above the line, which the present Lord Baltimore demanded, and which Messrs. Penn conveyed to him by the agreement in May 1732.

With regard to the quieting order made on 18th August 1737, 1737. Aug. 18. it appears to have been intended to preserve peace, not to affect the right of either proprietor, and it also appears to have been as a provisional order, until his Majesty's pleasure should be further signified.

That order consists of two parts; the first an order to keep

the peace ; the second, an *order to grant out no lands, as a means also, for preserving the peace.*

And, as this is the first opportunity the Pennsylvania proprietors have had of offering any matter for consideration on that head, they beg leave to submit, in the first place, that they dutifully do contend to have peace and tranquility established, being unable to support themselves against these cruel attacks and hostilities : They hope they shall be believed to be very much in earnest, when they desire to have peace established ; and their behaviour, under all these, and many more cruel and barbarous attacks, may be offered, as the strongest proof of such their desire.

It is for peace sake, and for that only, that they are at this time suing by his Majesty's order, to enforce Lord Baltimore's agreement of 1732, by which, so very far from their gaining any territory, they lose a vast tract and territory, which they conveyed to him, purely and for no other end in the world, but that they might have somewhat, that might be at peace and free from interruption.

Wherefore they earnestly hope that both Governors shall be most strictly enjoined to keep the peace, but with this addition, that the limits of their respective jurisdictions may be precisely and respectively determined, for the present only, and without the least view or intention to prejudice the right of one, or advance the right of the other Proprietor.

For, as it at present stands, to keep the peace amongst the people inhabiting the said borders, it will be utterly impossible to know what or where, those borders are. The borders of Lord Baltimore's charter are incontestably in the middle of the peninsula, above fourscore miles below these disturbances, but as Cressap has first propagated it, it may now be pretended, for Lord Baltimore, that his borders reach above fourscore miles higher than that, and even more north than the city of Philadelphia itself, which space contains by far the greatest number of settlements in the whole province ; wherefore, if all that country may be called borders, or contested bounds, that will open a door for all imaginable inconveniences and contests about jurisdiction between the two provinces, and will leave, in effect, the whole province without any jurisdiction at all, or under an uncertainty

which jurisdiction they belong to, which would be attended with the most fatal consequences.

Nay, indeed, to leave one single mile, without a certain jurisdiction, would be an opportunity for debtors, for criminals, and all lawless persons, to establish and shelter themselves there, without control, to the annoyance of every body in both provinces, which the proprietors are very certain was never intended.

The Pennsylvania proprietors do most humbly offer, that they already have, and will in the most positive and effectual manner, give directions to their deputy governor and officers, not to pretend, till the dispute is ended, to claim the least jurisdiction whatever, beyond the lines settled by Lord Baltimore's own agreement in 1732, on condition only that Lord Baltimore will give the like directions to his governor and officers—and the Pennsylvania proprietors humbly pray that such directions may be, in the most effectual manner, enforced by his Majesty's royal orders.

And thus, a certain temporary limit may be established for the exercise of jurisdiction, which may preserve peace and good order amongst all his Majesty's subjects, and thereby answer the whole of his Majesty's most gracious and good intentions.

*But with respect to the not granting out any lands in contest, nor any part of the three lower counties,* the Pennsylvania proprietors do most dutifully submit to their Lordships, that such a restraint would prevent both the proprietors from answering the declared ends and purposes for which the charters were granted to them. As the lands in contest may be said and pretended to be the whole country, if Lord Baltimore thinks proper to depart from the former claim and settlement of the bounds; and any such restraint would be more particularly hurtful to Mr. Penns, who though they suffer in their loss of their fortune by it, have yet the pleasure to observe, that that constitution which was established by their father has so fully answered the ends of his charter, as to invite foreigners, in very great numbers, from every part of Europe, who find themselves oppressed at home, to seek shelter in Pennsylvania, and become useful and additional new subjects to his most sacred Majesty, and who would be utterly disappointed, and that good end defeated, if lands could not be granted out to them, or, which is all one, if no



lands but such as lay a great way back, in the uninhabited part of the country could be granted out to them.

Wherefore, they humbly hope his Majesty will not see cause that so great a check should be put to settling this most flourishing province of Pennsylvania, and the rather, since the other matter of settling the jurisdiction, may fully answer his Majesty's royal intentions, and fully preserve peace to all his subjects.

*But the last part of the direction at present subsisting, not to grant any part of the lower counties,* is apprehended to bear hard on Mr. Penns, and on them only, and they submit whether there may appear occasion for the same, since none of the forementioned matters are pretended to have happened there, or within very many miles of the same.

And Mr. Penns humbly hope there is the less reason now, for laying any restraint whatever, on their granting out land in the lower counties, in regard not only that those counties lie very remote from the scene where the Marylanders have committed all the foregoing disturbances, but also that, in August 1737, when the quieting order was made, *Lord Baltimore had then two petitions depending, to oppose Mr. Penns nomination of a new governor of the three lower counties, which his Lordship called an assertion of his right to those counties;* but, within a few days now past, when those petitions were brought on and appointed to be heard, his Lordship moved, by the advice of his council, as declared, to withdraw those petitions.

Mr. Penns hereby offer, That they already have, and will further give the most effectual and positive orders to their governors and officers, not to grant any lands whatever pending the suit, beyond the lines settled by Lord Baltimore's own agreement, and humbly hope his Lordship shall be directed to confine himself (during the continuance of the suit) to the lines so fixed and settled by himself, and not to set up a pretence, that the whole province of Pennsylvania is in contest; and that upon the injuries complained of by the original petition, your Lordships will make such order as shall to your Lordships seem just.

W. MURRAY.

## Proclamation of George III., A. D. 1769.

At the Court at St. James's the 11th day of January 1769.

## PRESENT.

The Kings most Excellent Majesty	
Lord President	Viscount Weymouth
Duke of Grafton	Viscount Falmouth
Lord Steward	Viscount Barrington
Earl of Rochford	Sir Edward Hawke

*Whereas* there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated the 22d of last Month in the words following Vizt.

*Memorandum.*—Here the Committee Report on the Petition of the Proprietaries of Maryland and Pensylvania for His Majestys Confirmation of Sundry Proceedings respecting the Boundaries of those Provinces.

His Majesty taking the said Report into Consideration was Pleased with the advice of His Privy Council to approve thereof, and doth hereby signify His Royal approbation of the said agreemts. and Proceedings mentioned in the Petition of the said Proprietaries (a copy whereof is hereunto annexed) so far as the same concern the Disputes formerly Subsisting between the Petitioners themselves. But his Majesty doth hereby Declare that such approbation shall not be construed in any manner to diminish or affect His Majesty's Claim of Right to the three lower Counties of Newcastle Kent and Sussex nor Prejudice any Prerogative Power Property title or Interest of His Majesty His Heirs and successors, in or to the said Territories Districts or Traets of Land or any part thereof, nor any Estate or Interest of any of the Planters, Proprietors, Tenants, or Occupiers of any Lands Tenements, or Hereditaments lying within the same, which the Petitioners had not a Right or power, by Virtue of the respective Charters or Grants, under which they

claim to bind or Conclude. Whereof as well the Proprietaries of the said provinces of Maryland and Pennsylvania, as all others whom it may concern, are to take Notice and govern themselves accordingly.

At the Council Chamber Whitehall the 22d December 1768.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

PRESENT.

Lord President	Viscount Falmouth
Duke of Grafton	Viscount Barrington
Earl of Shaftesbury	Lord North
Earl of Marchmont	Lord Sandys
Earl of Harcourt	James Stuart Makenzie Esqr.
Earl of Hillsborough	Lord Chief Justice Wilmot
Viscount Weymouth	Thomas Townshend Esquire.

Your Majesty having been pleased by your order in Council of the 26th of June 1767 to refer unto this Committee an humble Petition of the proprietaries of the Provinces of Maryland and Pensilvania praying your Majestys Confirmation of Sundry agreements and Proceedings respecting the Boundaries of those Provinces. The Lords of the Committee in obedience to Your Majestys said order of Reference, did, on the 24th of August 1767, take the said Petition into Consideration, and thought proper to refer the same to the Lords Commissioners for Trade and Plantations for their Consideration and opinion; and the said Lords Commissioners having Transmitted to this Committee a Report made to them by Your Majesty's Attorney and Solicitor General thereupon, their Lordships this day resumed the consideration of the whole matter, and do agree humbly to Report, that it may be Advisable for Your Majesty to give the Testimony of Your Royal approbation to the said Agreements and Proceedings so far as the same concern the disputes formerly subsisting between the petitioners themselves, and so as such approbation shall not be construed in any manner to diminish or affect Your Majestys Claim of Right to the three lower Counties of Newcastle, Kent and Sussex, and so that the same be without Prejudice to any Prerogative, Power, Property,

Title or Interest of Your Majesty, Your Heirs and Successors, in or to the said Territories, Districts, or Tracts of Land, or any part thereof, and also to any Estate or Interest of any of the Planters, Proprietors, Tenants or Occupiers of and Lands, Tenements, or Hereditaments, lying within the same, which the petitioners had not a Right or Power, by Virtue of the respective Charters or Grants, under which they claim to bind or Conclude.

To the Kings most Excellent Majesty in Council.

The Humble Petition of the Right Honourable Frederick Lord Baron of Baltimore in the Kingdom of Ireland true and absolute Lord and proprietary of the province of Maryland and of Thomas Penn and Richard Penn Esquires true and absolute Proprietaries of the Province of Pennsylvania and three Lower Countys of Newcastle Kent and Sussex on Delaware in America—most humbly sheweth :

That divers long Controversies and Disputes have Subsisted between your petitioner Lord Baltimores Ancestors and William Penn the Father and John Penn deceased the Brothers of Your petitioners Thomas and Richard Penn and Your Petitioners Thomas and Richard Penn from the year 1683 down to 1732 touching the Bounds and Limits of the said Provinces of Maryland and Pennsylvania and touching the Botunds and Limits between the province of Maryland and the said three lower Counties.

That in order to put an End to the said Disputes and Controversies certain Articles of Agreement bearing Date the 10th Day of May 1732 were entered into between Charles Lord Baltimore deceased the Father of your petitioner the Lord Baltimore of the one part and the said John Penn and your Petitioners Thomas and Richard Penn Sons and Deviseses under the Will of the said William Penn their late Father of the other part Whereby it was agreed in the manner following (that is to say)

*First.* That the plan Printed in the Margin which contained a Map of the peninsula therein mentioned and also of the Tracts of Ground wherein the province of Maryland (or part thereof) the said three lower Counties part of the province of Pennsylvania and part of Virginia do lye is a true Copy of those which had been sent over from America to the parties by their re-

spective Agents in those parts for their assistance in the settling the said Disputes and by which the said Agreement was to be Explained and Understood.

*Second.* That there should be the Circle mentioned in the Charter of Pennsylvania and Deed of Bargain and Sale or Feoffment of Newcastle therein mentioned (or so much thereof as is requisite) drawn and marked out at the twelve miles distance from the Town of Newcastle which twelve Miles should be twelve English Statute Miles.

*Third.* That a due East and West Line should be drawn across the said Peninsula (or across so much of it as should be requisite) such East and West Line to begin on the East part at the place in the said Map called Cape Hinlopen which lies South of Cape Cornelius on the Eastern Side of the said Peninsula towards the Main Ocean and at the point of the said Cape and to run towards the western side of the said Peninsula which lies upon the Chesopeak Bay but to stop in the Exact Middle of that part of the same Peninsula when so running a due East and West Course.

*Fourth.* That from the western point or End of the said East and West Line (which Western Point or End should be just half way across the said peninsula) a straight Line should run Northward up the said peninsula (and above the said peninsula if it should require it) till it should so touch the Western part of the Periphery of the said Circle as to make a Tangent thereto. The said Strait Line (as at that present apprehended) would run pretty near South and North (but however it might bear on the Compass) such Strait Line should be run Northward up the said peninsula and above the said peninsula if it should require it) and should begin at or from the Western point or End of the aforesaid East and West Line and should run until it should touch and make a Tangent to the Western part of the periphery of the said Circle and there the said Strait Line should End.

*Fifth.* That at the Northern point or End of the said Strait Line a Line should begin and should from thence run due North above the said peninsula but so far only until it should come into the same Latitude as fifteen English Statute Miles due South from the most Southern part of the City of Philadelphia.

*Sixth.* That a due East and West Line should be run in manner following. It should begin at the Northern point or

End of the said due South and North Line and should from thence run due West cross Susquehannah River to the utmost Western Extent of the said Province of Pennsylvania or so far in part thereof as should be then requisite in regard that as the same was to be a due East and West Line the beginning part thereof might be sufficient to continue the same by when further Occasion should require and when the Lands Westward in the said provinces of Maryland and Pennsylvania should be better settled and that it would occasion a very Great Expense and likewise be then needless to run the same to the utmost Extent Westward of the said province of Pennsylvania however the same should (then) be run across Susquehannah River and about five and twenty English Statute Miles further on the Western side of the said River.

*Seventh.* That the part of a Circle then drawn with Red Ink upon the said plan and the Red Lines also drawn there upon were then drawn to serve as an Explanation to the said Agreement but not with Exact Certainty in regard the said plans so sent over had neither scale nor compass to them.

*Eighth.* That the first above mentioned due East and West Line to run from Cape Hinlopen to the middle of the Peninsula and the said Strait Line to run from the Western point thereof Northwards up the said Peninsula (and above the said Peninsula if it should require it) till it should touch or make a Tangent to the Western part of the Periphery of the said Twelve miles Circle and the said due South and North Line to run from such Tangent till it should meet with the upper or more Northern East and West Line and the said upper East and West Line to begin from the Northern point or End of the said South and North Line and to run due Westward at that present Cross Susquehannah River and five and twenty English Statute Miles South of the Latitude of the most Southern part of the said City of Philadelphia were and should be and at all times for ever thereafter should be allowed to be the true and Exact Limits between the said province of Maryland and the said three Lower Counties of Newcastle Kent and Sussex and between the said provinces of Maryland and Pennsylvania, excepting only, that in Case the said north Line from the Tangent of the Circle of Newcastle should break in upon the said Circle in such Case



so much of the said Circle as should be cut off by the said Line should belong to and be part of the County of Newcastle.

*Ninth.* That the said Charles Lord Baltimore and his Heirs and Assigns on his part and the said John Penn and your petitioners Thomas and Richard Penn and their Heirs and Assigns on their parts should by proper powers and Instruments within two Months appoint a sufficient Number of proper persons not more than seven on each side to be their Commissioners with full power to the said seven persons or any three or more of them for the actual running marking and laying out the said part of a Circle and the said Lines which said Commissioners should give due Notice to each other and should fix upon a time to begin and proceed in the running the same and the same should be begun at the farthest some time in October then next and be proceeded in with all fairness Candour and Dispatch and the said Lines should be marked out by Visible Stones Posts Trees Pillars Buildings Landmarks or other Certain Boundaries which might remain such Boundaries to be marked on one Side with the arms of the said Charles Lord Baltimore and on the other side with the arms of the proprietors of Pennsylvania and such Lines should be Compleatly so run (as far as by the said Agreement was intended) on or before the 25th day of December 1733, and when so done a true plan and survey thereof with the best and most certain Descriptions that could possibly be given of the same should be made up Signed and Sealed by the said Commissioners on both sides and by their principals and should be Entered in all the publick Offices in the said several provinces and Counties and moreover it should be recommended by the respective proprietors to the Assemblies of the said several provinces and Counties forthwith to pass Acts of Legislature for the Visitation upon Certain Fixed Days to be agreed on on both sides (at least once in every three Years) and for the Continual Reparation of the said Boundaries and Bound Marks and that no Disputes might arise thereafter concerning the same.

*Tenth.* That the said Charles Lord Baltimore for himself and his Heirs did thereby for ever renounce release and quit claim unto the said John Penn and your petitioners Thomas and Richard Penn and their Heirs All Rights Titles Interest Powers Prerogatives Claims Demands and Pretensions to the said pro-

vince of Pensylvania and to the said three lower Counties of New Castle Kent and Sussex to be so bounded as aforesaid (part at least of the said three lower Counties being then known to be Comprised within the Bounds mentioned in the said Charter of Maryland) and did at the request and Cost of the said John Penn and your petitioners Thomas and Richard Penn and their Heirs agree to Grant Convey and Assure in the most effectual manner the said Province of Pennsylvania and the said three Lower Counties to be bounded as aforesaid free from all Incumbrances by Cecilius Lord Baron of Baltimore Great Grandfather of the said Charles Lord Baltimore Charles Grandfather of the said Charles Lord Baltimore Benedict Father of the said Charles Lord Baltimore or by him the said Charles Lord Baltimore his Heirs or Assigns excepting such grants and Agreements to Planters as therein after mentioned unto the said John Penn and your Petitioners Thomas and Richard Penn and their Heirs To hold unto the said John Penn and your Petitioners Thomas and Richard Penn and their Heirs To the use of them and their Heirs for ever And on the other Hand the said John Penn and your Petitioner's Thos. and Richard Penn for themselves and their Heirs did thereby for ever Renounce and Quit Claim unto the said Charles Lord Baltimore and his Heirs All Rights Titles Interest Powers Prerogatives Claims Demands and Pretensions to the said Province of Maryland to be so bounded (part whereof when so bounded being apprehended to be Comprised within the Bounds mentioned in the said Charter for Pensylvania) and should also at the request and Cost of the said Charles Lord Baltimore and his Heirs Grant Convey and Assure in the most Effectual manner the said province of Maryland to be so Bounded as aforesaid free From all Incumbrances by William Penn the Grandfather William Penn the Father Springett Penn Esqr. deceased William Penn the son all therein mentioned John Penn and your Petitioners Thomas and Richard Penn their Heirs and Assigns excepting such Grants or Agreements to Planters as is therein after mentioned unto the said Charles Lord Baltimore and his Heirs To hold unto the said Charles Lord Baltimore and his Heirs To the Use of him and his Heirs for ever.

*Eleventh.* Whereas during the Disputes which had theretofore subsisted and then were accomodated divers Persons under

Grants made and Granted from the said Charles Lord Baltimore and his ancestors before the fifteenth day of May 1724 might have Cleared Occupied and possessed several Parcels of Land within the Limits and Bounds thereby Yielded and agreed upon for the said province of Pensilvania and for the said three lower counties and in like manner other persons under Grants made and Granted from the said John Penn and your Petitioners Thomas and Richard Penn or their ancestors before the said 15th Day of May 1724 might have Cleared Occupied and Possessed several Parcels of Land within the Limits and Bounds thereby Yielded for the said Province of Maryland and it might be proper to Quiet such Occupiers in their respective possessions (which might otherwise be disturbed by the agreement of the Proprietors) under some Restrictions It was therefore mutually agreed that in order to the Information of the Parties each of the said proprietors should have full Liberty to take Copies at their Costs of all Grants &c. which at any time before the said 15th Day of May 1724 had been made or Granted by the respective proprietors or their ancestors and under which any of the said Occupiers did Claim any such parcels of Land and in order to Quiet and settle such Occupiers every of them might upon request and payment of the accustomed Fees, in such Cases only have new Grants or Patents from the respective Proprietors within whose Territory their Lands by virtue of or according to agreement should lye for the like Estate and Interest as mentioned in their Original Grants upon Condition that they did first attorn and become Tenants to their respective Proprietors within whose Territories the Lands then lay according to the agreement and did submit themselves in all things to the Government thereof and did pay to the New Proprietor (unless it should be dispensed with by him) all such Fines Rents and Arrearages of Rents and Duties as by their Original Grants were to have been paid to their former proprietor and which had not then been really paid To the Use of such their former proprietor and for the time thence forwards such occupiers should be put upon the like Foot and Condition with the rest of the occupiers and Tenants who held Lands in such parts of the said respective provinces and Counties as had never been in Contest and such occupiers and Tenants claiming originally under another proprietor as aforesaid should hold their Lands and

have patents thereof Granted them by their new proprietors subject to the like Fines Rents Duties and Services as the other Land holders were and had been generally subject to in the respective provinces and Counties to which they should belong with a proviso therein that in Case any persons during the Disputes which had subsisted had taken double Titles (that is to say) from both the said proprietors under which they had sheltered themselves by turns against each of the said proprietors And also in Cases where any persons during the said Disputes had of their own authority seated themselves down upon any parcels of Land without Licence or authority from either of the said proprietors such Persons in respect of such Lands were by no means to be Included in this Article but were (however) to be treated with Moderation and with some regard and the more so in Case they had theretofore actually paid the Usual Quit Rents to either of the said Proprietors and Provided they should Surrender their former Grant and Submit to hold only under the proprietor as the Case might be.

*Twelfth.* That in Case the parties could conclude upon any further Clauses in favour of the Occupiers of any Lands within the Bounds theretofore disturbed the same should be contained in a subsequent agreement between them.

That the said Charles Lord Baltimore being not willing to perform the said agreement did on the 8th day of August 1734 present a Petition to His Majesty insisting that the lower Counties were within the Limits of His Grant and praying that His Majesty would Grant further Letters Patent to Confirm to him and his Heirs the whole of such part of the peninsula as is contained in the Limits of his Charter.

That on the 19th day of December 1734 Your petitioner Richard Penn (on behalf of himself and his two Brothers then in Pennsylvania) petitioned the King praying that Lord Baltimore's Petition might be dismissed.

That upon the 16th day of January 1734 the Lords of Trade (to whom Lord Baltimores Petition had been referred) made their Report and on the 10th day of May 1735 the Lords of the Council upon Consideration of this Report and of the petition of your petitioner Richard Penn and hearing Council Reported that it was their opinion that the Considerations of the said petitions should be adjourned to the End of Michaelmas

Term to give an opportunity for the said John Penn and your petitioners Thomas and Richard Penn to bring a Bill to obtain Relief on the said articles of agreement as they should be advised and that after the Expiration of the said Term either party should be at Liberty to apply to the Committee of Council for plantation affairs as the nature of the Case might require.

That the said John Penn and your petitioners Thos. and Richard Penn in pursuance of the said last mentioned Order in Council on or about the 21st day of June 1735 Exhibited their original Bill of Complaint into His Majestys High Court of Chancery in Great Britain against the said Charles last Lord Baltimore as Defendant thereto which Bill was afterwards amended and Sundry Bills of Revivor and Supplemental Bills were afterwards filed from Time to Time in the said Cause upon the Decease of the said John Penn and as other occasions required by which several of the Children of the said Richard Penn and the Executors in Great Britain of the said John Penn deceased were additionally made Coplaintiffs and also his Majestys Attorney General and sundry other persons were additionally made other partys Defendants thereto By which said Bill the plaintiffs the parties in the said Cause prayed (amongst other matters) that they might be quieted in the possession of the said three Lower Counties and that the said Defendant Charles Lord Baltimore might be Decead to Desist from giving them any further Trouble or Molestation by renewing his Claims under the said Bill mentioned and that the said Articles of the 10th day of May 1732 might be deceed to Exist and be in full force and virtue and might be forthwith Specifically performed and carried into full Execution and that all necessary Directions might be given and that the pretended Doubts set forth in the Bill as to the fixing a Centre for the Circle round the Town of New Castle and as to the Dimensions of the said Circle or distance from the said Town at which it was to be marked out and any other Doubt or pretended Difficulty that the Defendant the said Charles Lord Baltimore had or pretended to have relating to the said Articles or the Execution and performance of the same might be removed by the Decead of the Court and that the said Defendant might then and might again (after the said Lines should be run in a more certain and particuar manner pursuant to His Covenants in the said articles) make further Conveyances



and Assurances to the Plaintiffs their Heirs and Assigns of the said Province of Pennsylvania and of the said three Lower Counties to be butted and bounded according to the Intent of the said articles and of all his Right Interest Pretensions Claims and Demands in and to the same and be Decreed to pay all the Costs and Expenses of the Commissioners and otherwise relating to the Executing the said agreement of May 1732 and likewise all the Costs which the plaintiffs had been put to by Reason of the Breach and nonperformance on the part of the Defendants of the said Articles of Agreement and by Reason of the said Petition of the said Defendant presented to His Majesty on the said Eighth Day of August 1734 and that the Plaintiffs might have all such further and other Relief in the premises and in such other manner as should be Consistent with Justice and Equity.

That the said Charles late Lord Baltimore put in his Answers to the said Bills, and thereby (amongst other things) insisted on Fraud and Imposition in obtaining the said Articles of Agreement and that the same were Void and Voluntary and without Consideration and therefore sayd that he hoped the plaintiffs should not have any such Relief as was prayed and that the said Articles should not be carried into Execution but be delivered up to be Cancelled and that the plaintiffs should be decreed to pay his Costs.

That the said Cause was carried on at a great Expense and being regularly at Issue great Numbers of Witnesses were duly Examined therein on each side both in America and in Great Britain after which the said Cause came on to be heard and was heard before the late Lord Chancellor of Great Britain in presence of Council learned for all parties on or about the 3rd 4th 7th 8th 9th 11th and 15th Days of May 1750 and upon the said 15th day of May 1750 the said late Lord Chancellor decreed that the said Articles of the 10th day of May 1732 and the several Matters therein Contained should be performed and carried into Execution by and between the said parties and every of them and to that End it was further Ordered that the plaintiffs your petitioners Thomas and Richard Penn in their own Right and as Standing in the place of the said John Penn deceased and the Defendant the Lord Baltimore should before End of three Months from that Day Execute under their Hands



and Seals two several proper Instruments appointing and authorizing proper persons not more than seven on each side with full power to the said seven persons respectively or any three or more of them for the actual running the part of a Circle and the several Lines in the said articles mentioned and such Commissioners were to give Due Notice to each other and to fix upon a time to begin and proceed in the running the same. And that the same should be begun at the furthest in the month of November then next and be proceeded in according to the said Articles and that the said Lines should be marked out by visible Stones Posts Trees Pillars Buildings and Landmarks or other certain Boundaries which might Remain and should be marked on one side with the Arms of the said Defendant the Lord Baltimore and on the other side with the arms of the Plaintiffs the Penns and that such Lines should be completely run on or before the last Day of April 1752 and when so done his Lordship further ordered that a true and Exact Plan and Survey thereof with the most Exact Discriptions that could be given of the same should be made up signed and Sealed by the said Commissioners on both sides and by their principals and be Entered in all the Publick Offices in the provinces of Maryland and Pennsylvania and the three lower Counties of Newcastle Kent and Sussex and that a true Copy of such respective Instruments for appointing Commissioners when prepared should be delivered by the Solicitor of the one party to the Solicitor of the other party and in Case the parties should differ about such Instrument His Lordship further Ordered that it should be referred to Mr. Spicer one of Masters of that Court to Settle the same, and two Questions in particular having been raised in America by the Commissioners formerly appointed by the said Defendant the Lord Baltimore and being then made in that Cause (Vizt) where the Centre of a Circle agreed by the said Articles to be drawn about the Town of Newcastle ought to be fixed and whether the said Circle ought to be of a Radius or Semidiameter of Twelve Miles and a third Question having been also made in the said Cause vizt At what Place the Cape called in the said Articles Cape Hinlopen was Situated His Lordship declared that he was of opinion that according to the true Intent and Construction of the said Articles the Centre of the said Circle ought to be fixed in the Middle of the town of Newcastle as near as the same

could be computed and that the said Circle ought to be of a Radius or Semediameter of twelve Miles and that Cape Hinlopen ought to be deemed and taken to be Situated at the Place where the same was laid down and described in the Plan annexed to the said Articles and therefore His Lordship further ordered and Decreed that the said Articles should be carried into Execution accordingly and after the said Limits and Boundaries should be set out and ascertained by the said Commissioners His Lordship ordered that the Plaintiffs your petitioners Thomas and Richard Penn in their own Right and as Standing in the Place of the said John Penn Deceased and the Defendant the Lord Baltimore should respectively Release and Convey to each other and their Heirs the respective Rights Titles Interests Powers Prerogatives Claims Demands and Pretensions in or to the respective Territories Districts and Lands severally allotted to them according to the tenth Article of the said Agreement at the Costs and Charges of the person to whom such Release and Conveyance should be made and all proper parties were to Join in such Releases and Conveyances as the said Master should direct. But the said Decree was to be without Prejudice to any Prerogative Power Property Title or Interest of His Majesty his Heirs and Successors in or to the said Districts or Tracts of Land or any part thereof And also to any Estate or Interest or Possession of any of the said Planters Proprietors Tenants or occupiers of any Lands Tenements or Hereditaments lying within the same which the Parties to the said articles had not a Right or Power by Virtue of the respective Charters or Grants under which they Claimed to bind or Conclude and in Case His Majesty his Heirs or Successors should Insist upon any Power Title or Right whatsoever either on behalf of himself his Heirs or Successors or of any of his or their Subjects residing in or being Possessed of or Interested in any Lands Tenements or Hereditaments lying within any of the said Territories Districts or Tracts of Land so as to hinder or obstruct the Effectual Execution or performance of the said Articles or any part thereof then and in every such Case any of the parties were to be at Liberty to apply to the Court from time to time as they should be advised and his Lordship reserved the Consideration of any further or other directions to be given as between the Plaintiffs and the Defendant the Lord Baltimore and the Defendants

claiming and William Penn Esquire deceased and further ordered that the Plaintiffs should Pay unto the Defendant the Earl Powlett his Cost of the said Suit to be Taxed and that the Defendant the Lord Baltimore should pay unto the said Plaintiffs their Costs to that Time to be Taxed and reserved the Consideration of the subsequent Costs and all further Directions until the time therein Limited for performance of the said Articles should be Expired and any of the parties were to be at Liberty to Resort to the Court as there should be occasion which Decree hath since been duly Signed and Enrolled.

That after pronouncing the said Decree the said Charles Lord Baltimore submitted thereto and in obedience thereto Commissions were respectively Executed by him and by your Petitioners Thomas and Richard Penn authorizing sundry persons as their respective Commissioners to carry the said Articles of Agreement and Decree into Execution and to run the Lines part of a Circle and Boundaries so agreed and Decreed and the Commissioners proceeded therein but in the Course of such their proceedings sundry other objections were raised in America to some of the said Work by the Commissioners on the part of the said Charles Lord Baltimore.

That thereupon your petitioners Thomas and Richard Penn on or about the 16th day of March 1750 presented their humble petition to the said late Lord High Chancellor pursuant to the Reservation in the said Decree (humbly setting forth the new objections which had been so made and praying (amongst other things) that it might be Declared that the Circle Round the Town of Newcastle ought to be at twelve Miles Distance from the Centre according to Horizontal and not Superficial Measure and that the fifteen Miles due South of the southermost part of the city of Philadelphia ought to be Computed according to the like Measure and the said petition came on to be heard before the late Lord High Chancellor on or about the 27th and 29th Days of the same Month of March but in the year 1751 in the Presence of Council for the said Plaintiffs and for the said Charles Lord Baltimore and the said Lord High Chancellor on the said twenty-ninth day of March 1751 made an Order to the following Effect. His Lordship declared that the part of a Circle mentioned in the said Decree to be drawn round the Town of Newcastle ought to be at twelve Miles Distance from the Centre

according to Horizontal and not Superficial Measure and that the fifteen Miles due South of the Southermost part of the City of Philadelphia ought to be Computed according to the like measure and did order that the Commissioners on both sides should observe that Rule in carrying the said Decree into Execution and reserved the Consideration of the Costs of that application in like manner as the Costs subsequent to the Hearing were reserved by the said Decree.

That the said Charles Lord Baltimore died in England about the 23d day of April 1751 leaving your petitioner Frederick Lord Baltimore his only Son and Heir then an Infant and having after the Time of Pronouncing the said Decree duly made and Executed his last will and Testament in writing which was attested by three Witnesses and bears date on or about the 17th day of November 1750 and having thereby devised his Real Estate as therein mentioned and after payment of his Debts Legacies Funeral Charges and the Charges of his Executors Devised the residue of his personal Estate to his said son.

That the Commissioners appointed by the said Charles late Lord Baltimore and by your Petitioners Thomas and Richard Penn proceeded in America towards the Execution of the said agreement and Decree especially in such parts to which no difficulties had been raised and particularly the said Commissioners before the twenty-sixth day of April one thousand seven hundred and fifty-one duly Signed a Minute in Writing and declared it to have agreed to by them First that a due West Line should be run and marked out by visible Stones Trees Buildings or Landmarks to begin at a point on the verge of the Main Ocean (being at the Distance of 139 perches due East from a Stone fixed by the said Commissioners on the Northern part of the Land called Fenwick's Island) near to Four Mulberry Trees there growing across the peninsula to the Bay of Chesopeak which fixed stone was marked on the side thereof turned to the South with the Arms of the Lord Baltimore and on the other side thereof turned to the North with the Arms of your petitioners Thomas and Richard Penn and Secondly that the said Point or Place of beginning should be agreed to be the Place where the Cape called in the articles Cape Hinlopen was Situated and that the said Line when so laid out should be es-

teemed and be the East and West Line which the said Commissioners were directed and Impowered to draw across the said Peninsula by virtue of their several Commissions according to the third Article of the said Agreement from the middle whereof a Tangent Line was to be drawn to the Western Part of the Periphery of a Circle at twelve Miles distance from the Town of Newcastle subject nevertheless to the alteration or Confirmation by the Right Honourable the Lord High Chancellor of Great Britain or the joint order or Direction of their Constituents.

That the said Commissioners and their Surveyors in Consequence of such their agreement began in their own persons to Execute the same and fix a Meridian Line and measured and marked out the said East and West Line due West from the said point or place of beginning on the verge of the Main Ocean and found the Extent of the said West Line from the Verge of the Ocean on the East part as far as to a certain place or Water called Slaughters Creek on the West part at which place or Water the said Charles Lord Baltimores said Commissioners insisted the said Line should stop) amounted to sixty six Miles and two hundred and forty eight perches and a half But that when such Line was continued on farther West quite to the verge of the East side of Chesopeak Bay To which Bay (the Commissioners of your petitioners Thomas and Richard Penn insisted the same Line ought to run and extend) the same amounting to sixty nine Miles and 298 perches.

That the said East and West Line when Extended West to the Verge of the Bay of Chesopeak runs through Taylors Island and through a small part of James's Island at or near the Southern end of the said James's Island.

That the measuring and marking out the said East and West Line was a Work attended with a large and heavy Expence to the parties and although some part of the said Work was carried on by the Commissioners and Surveyors in America after the Day of the decease of the said Charles late Lord Baltimore in Great Britain Yet the same was bona fide carried on and Finished long before the respective Commissioners in America received any Information thereof the Death of the said Charles Lord Baltimore and the consequence of Extending the said Line West to the said Bay of Chesopeak was that according to the

said Articles of Agreement and Decree the said Tangent Line to be drawn up the said peninsula and to make a Tangent to the Western part of the periphery of the said Circle at twelve Miles Distance from the Town of Newcastle was to begin at the Middle of the said East and West Line, that is to say, at the distance of thirty four of the said Miles and 309 perches from the said point or place of Beginning of the said East and West Line at the said East End of the same East and West Line.

That your Petitioners Thomas and Richard Penn together with Sundry of their Children and the Executors in Great Britain of their Deceased Brother the said John Penn on or about the 8th day of November 1754 Exhibited into the said Court of Chancery their Bill of Revivor and Supplemental Bill of Complaint against your petitioner Frederick Lord Baltimore and sundry other persons therein named as parties Defendants thereto and thereby stated the proceedings and the said Decree and Subsequent Order which had been obtained in the said former Cause against the said Charles late Lord Baltimore and also the proceedings of the said Commissioners in America and the new Question which was made by the Commissioners of the said Charles Lord Baltimore whether the said East and West Line should Extend West across the said peninsula Quite home to the Bay of Chesopeak or should stop there at the said other place or Water called Slaughters Creek and also the Will and Death of the said Charles late Lord Baltimore and many other matters and thereby prayed (amongst other things) that the said former Suit the said Inrolled Decree and Subsequent Order and all other the proceedings therein which abated by the Death of the said Charles late Lord Baltimore might be revived in full force against and be fully Compleatly and in every part thereof Obedyed Performed and Executed by all the Defendants or by such of them as claimed or should appear to have any Estate or Right to the said province of Maryland and that all the Defendants might by the authority of the said Court be decreed to obey the said Decree and that the said Defendants might shew Cause why the said Decree and Proceedings should not be revived and might answer the Supplemental matters contained in the said Bill and that the matter whether the said East and West Line should stop at its Western End at Chesopeak Bay or at any and what particular place short of the said



Bay might be settled by the Judgment of the said Court and for a discovery of all Settlements and pretended Settlements or Agreements to settle the said province of Maryland and for further Relief.

That the plaintiffs in the said Cause on or about the 21st day of November 1754 obtained an Order of the said Court to revive the said former Suit and proceedings against Your Petitioner Frederick Lord Baltimore.

That your petitioner Frederick Lord Baltimore on or about the twenty second day of March 1755 put in his plea to Part and Answer to other Part of the said Bill of Revivor and Supplemental Bill and by such his Plea insisted on certain Settlements said to be made of the said province of Maryland by Indentures of Lease and Release on the 30th and 31st Days of December in the Year of Our Lord 1698 and by other Indentures of Lease and Release of the 10th and 11th Days of July in the Year of Our Lord 1730 and that Your Petitioner Frederick Lord Baltimore by virtue of and under the said Settlements or one of them was seized to him and the Heirs Male of His Body of the Province of Maryland which he pleaded in Bar to the Relief Sought by the said last mentioned Bill and Insisted that his Right and Interest to the said Provinces of Maryland and Pensylvania and the three lower Counties or any of them ought not to be bound by the Articles Executed by His Father.

That the said plea was set down and came on to be in part argued before the Right Honourable the late Lord High Chancellor of Great Britain on or about the seventh day of May 1755 But the said Plea was not fully Argued or Determined and the Council for your Petitioner Frederick Baltimore then agreed to deliver over Copies of the several Family Settlements and Agreements in Order to shew to the plaintiffs that your Petitioner Frederick Lord Baltimore was not Bound by the said articles or by the said Decree or Subsequent order and accordingly the agent of your petitioner Frederick Lord Baltimore did deliver over unto the agent of your petitioners the said Thos. and Richard Penn Copies of one settlement of the said province of Maryland bearing Date on or about the said 31st day of December 1698 and made by Way of Lease and Release by Charles late Lord Baltimore the Elder late Great Grandfather of your Petitioner Frederick Lord Baltimore and by Benedict Calvert

then Son and Heir apparent of the same Charles late Lord Baltimore the Elder and of another settlement of the said Province of Maryland bearing Date on or about the said 11th day of July 1730 and made and Executed by Way of Lease and Release by Charles late Lord Baltimore the late Father of your petitioner Frederick Lord Baltimore and of a Certain Indenture of Covenants and Agreements relating to the said province of Maryland bearing date on or about the 9th day of March 1753 and Entered into and Executed by your petitioner Frederick Lord Baltimore and Cecilius Calvert his Uncle.

That your Petitioners the said Thomas and Richard Penn and other the plaintiffs after that they and their Council had considered the said Deeds did obtain an order bearing Date the 16th day of the same Month of May 1755 That the plaintiffs might be at Liberty to amend their said Bill and on or about the 6th day of December 1755 Exhibited a new Engrossment of their amended Bill of Revivor and Supplemental Bill of Complaint against your petitioner Frederick Lord Baltimore and several other persons as parties named for Defendants thereto and thereby Charged and put in Issue as well the several last mentioned proceedings of the said Commissioners in America as the Will and Death of the said Charles late Lord Baltimore Father of your petitioner Frederick Lord Baltimore and the several Family Settlements and Indentures of Covenants and agreements relating to the said province of Maryland Copies whereof had been so delivered over as aforesaid and Insisted that your petitioner Frederick Lord Baltimore was bound by and ought to perform the said articles and the said Decree of the 15th Day of May 1750 and the said Subsequent order of the 29th day of March 1751 and also Insisted on the Validity of the said Commissioners last mentioned proceedings and prayed (amongst other things) that the said former Suit Inrolled Decree and Subsequent Order and all other the proceedings therein which abated by the Death of the said Charles late Lord Baltimore might stand and be revived and be fully and Completely obeyed performed and Executed by all the then Defts or by such and so many of them as Claimed or should appear to have any Right or Interest in the said province of Maryland and that all the Defendants might by the Authority of the Court be Deceeed to Obey the said Decree and if the Court

should not think proper to Deeree the Defendants specifically to perform the said Articles that then Plaintiffs might then have a Deeree for a Discovery and Account of the Real and personal Assetts of the said Charles late Lord Baltimore and that the same might be paid to or secured for the plaintiffs as well for paying their costs as also for making them a Satisfaction for the very great Damages they had already incurred and for the much greater Damages they might thereafter sustain by the Breach and nonperformance of the said Articles and that the said Deeree and subsequent order might be decreed to be obeyed and Performed in all points by all the the then Defendants or by such as ought to perform and obey the same and by their respective Issues and by all persons claiming by or under them and that the plaintiffs the proprietaries of Pensilvania might have the Deeree and perpetual Injunction of the Court to Enjoy to them and their Heirs for ever the said Territories and Lands so Released by the said Charles the last Lord Baltimore by the said Articles as against the Defendants Frederick Lord Baltimore Louisa Calvert and Cecilius Calvert and their Heirs and Assigns and their respective Issues and against all persons claiming under or in Trust for them and that the Costs Decreed to be paid and those reserved might all be decreed to be paid by the Defendants or by such of them as the same might Concern and that the Doubt touching the Extent Westwards of the said East and West Line to run across the said Peninsula might be cleared up and determined by the authority of the Court and for further and other Relief.

That before any answer was put into the said amended Bill your Petitioner Frederick Lord Baltimore and your petitioners Thomas Penn and Richard Penn came to an amicable agreement of all their Differences in consequence of which by a certain Indenture (ready to be produced and verified) bearing Date the 4th day of July 1760 and made between your petitioner Frederick Lord Baltimore as only Son and Heirs at Law Devisee and Residuary Legatee of His Father Charles Lord Baltimore and as such or under some or one of the settlements aforesaid true and absolute Lord and proprietary of the province of Maryland in America of the one part and your petitioners Thomas and Richard Penn as true and absolute proprietaries of the province of Pennsylvania and three lower Counties of Newcastle Kent and Sussex on Delaware in America of the

other part, after Reciting amongst other Particulars herein before mentioned It is Witnessed for putting a final and perpetual End to all Disputes and Differences between the parties relating to the Extents Bounds and Limits of the said Province of Maryland Province of Pennsylvania and the three lower Counties of Newcastle Kent and Sussex on Delaware and in order that the same Provinces and Counties might respectively be peaceably possessed and quietly Governed by the respective proprietaries and that the Business of the Settlements and Improvements of the same might be carried on by the respective proprietaries without farther Interruption and to as great a Degree as might be done and for the putting an end to that Excessive Expence which the parties on Both sides and their respective ancestors had long Sustained during the said Contests your petitioner Frederick Lord Baltimore for himself and his Heirs Executors Admors and assigns and for each and every of them did acknowledge Testify and Declare and did also Covenant promise Grant and Agree to and with your petitioners Thomas and Richard Penn and their Heirs Executors Admors and Assigns in manner following (viz) That the Commissioners who had been appointed by the said Charles Lord Baltimore and by your petitioners the said Thomas and Richard Penn did duly proceed in the Execution of such Commissions and did justly agree upon and determine the true Spot or point for beginning from whence to measure the due West Line across the said Peninsula which was agreed and directed by the said Articles of Agreement and Decree That the said Spot or point or place for beginning such due West Line was and should at all times forever thereafter be established to be where the said Commissioners so agreed upon the same to be, namely at a point on the Verge of the Main ocean being at the distance of 139 perches due East from a Stone fixed by the said Commissioners on the Northern part of the Island called Fenwick's near to Four Mulberry Trees there growing and which Stone was marked on the side thereof to the South with the arms of the said Charles last Lord Baltimore and on the side thereof to the North with the arms of your Petitioners the said Thomas and Richard Penn That the said Spot of beginning such due West Line should at all times forever thereafter be Esteemed the point of Cape Hinlopen mentioned in the said Articles at which the East and West Line across the

said Peninsula mentioned in the same Articles was intended to begin that the said Commissioners and their Surveyors did rightly fix the due Meridian Line and did then proceed justly according to the said Articles and Decree and their respective Commissioners and did measure a true West Line from the said spot of beginning at the East End thereof quite across the said Whole peninsula to the Verge on the Eastern side of the said Bay of Chesapeake at the West End thereof in Exact pursuance of and Compliance with the said recited articles of Agreement and Decree and the True Intent and meaning thereof That the said commissioners did agree that the said West Line measured quite across the said whole peninsula to the extent of 69 miles and 298 Perches That the true length and Extent of the said West Line was and should at all times for ever thereafter be Esteemed to be 69 miles and 298 perches and neither more or less and consequently the Exact middle of such West Line (whence the other Line was to begin which was to run up the said Peninsula till it made a Tangent to the Western part of the Periphery of the said part of a Circle at the Distance of twelve English Statute Miles Horizontally measured from the Court House in the said Town of Newcastle) was and should at all times for ever be esteemed to be at the Exact Distance of 34 of the said Miles and three hundred and nine perches so measured West from the aforesaid of beginning of the said West Line as the same were so measured as as aforesaid.

That as the said Exact middle of the said Western Line (as then fixed and for ever agreed) would be a very material Bound or Corner mark between the parties two Different Ways so in addition to or rather in ascertainment of that Part of the said former agreement there should be at the joint expence of the said respective proprietaries and their Heirs one or more large and remarkable Stones erected and continued for ever there according to the Angle made by the said due West Line and by the said Tangent Line for dividing the said peninsula which Stone or Stones on the outward side facing towards the West and South should have the arms of your petitioner Frederick Lord Baltimore and on the Inward sides of the same facing towards the East and towards the North should have the arms of your petitioners the said Thomas and Richard Penn.

That your petitioner Frederick Lord Baltimore and his Heirs



and Assigns should within thirty Days Execute one or more Commissions appointing seven proper persons or any number of them not less than three as Commissioners on his and their parts to run out all such parts of the said Circles Lines Marks and Boundarys as were not then Completed and to carry the said former Articles Decree and Subsequent Order and the Agreement in the said Indenture of July 1760 into full and Compleat Execution. That such Commissrs should proceed with all Fairness and Dispatch: That neither your Petitioner Frederick Lord Baltimore nor his Heirs Executors or Administrators should at any time thereafter be consenting to assisting in or promote in any manner or lend his or their Names towards the Commencing or Defending any Suit whatsoever to be commenced or defended by any of the Tenants of Your Petitioner Frederick Lord Baltimore by any of his Grantees or the Grantees of any of His Ancestors whereby the Right of Your Petitioners said Thomas and Richard Penn their Heirs or Assigns to the said province of Pennsylvania in America with all and Singular the Rights Royalties Members and Appurtenances thereof and all those Territories and Tracts of Land called the three lower Counties of Newcastle Kent and Sussex upon Delaware with their Rights Royalties Members and Appurtenances the said Province and Counties Bounded and to be bounded according to the Extent Bounds and Limits agreed by the said Articles and Decreed by the said Decree and ordered by the said Subsequent Order of the 29th day of May 1751 and the true meaning of the said Indenture of July 1760 might be drawn in Question or Controverted.

That Your Petitioner Frederick Lord Baltimore his Heirs and Assigns would on request and at the Costs and Charges of Your Petitioners the said Thomas and Richard Penn their Heirs and Assigns Execute any farther matter and thing Exclusive of the Acts thereby Stipulated and intended to be performed at a joint expence which should any way be necessary to be done for rendering the said articles Decree and Subsequent order and the said Indenture of July 1760 most perfect and Effectual. That Your Petitioner Frederick Lord Baltimore would within three Days in his own person duly acknowledge the Execution thereof and his Consent that the same might be Inrolled before one of the Masters of the Court of Chancery to the Intent that the same might be Inrolled. That Your Petitioner Frederick Lord Bal-



timore would within thirty Days after a Bill should be filed by Your Petitioners the said Thomas and Richard Penn or their Heirs against your petitioner Frederick Lord Baltimore in the said High Court of Chancery for carrying the said matters and things contained in the said Agreement into Execution duly put in his Answer thereto and in such Answer should admit all such matters as in the said Indenture were by him admitted, and particularly that your petitioner the said Frederick Lord Baltimore and all persons claiming the said province of Maryland under him should be bound to obey and perform the said Articles and the said Decree and Subsequent Order of the said Court of Chancery and also the said proceedings of the said Commissioners in and about the said Spot of beginning of the said West Line and in and about the said Meridian Line and in and about the running and measuring the said Line due west cross the said peninsula and in and about the true length and extent of the said Line as aforesaid and that such Bill and Answer should be settled with the Approbation of Council on both Sides. That Neither in such Answer or at any other time should your petitioner Frederick Lord Baltimore his Heirs or Assigns or any of his or their Council or Agents demand any Costs to be decreed to him or them in respect to the said Suit then depending but the said Suit and all proceedings therein should be forthwith dismissed upon a proper application to be forthwith made by Your petitioner Frederick Lord Baltimore to the Court of Chancery as for want of Prosecution.

That upon request made to your petitioner Frederick Lord Baltimore or to his Clerk in Court or Solicitor after such answer put in Your petitioner Frederick Lord Baltimore or his Clerk in Court or Solicitor should Instantly sign a full Consent for setting the said Cause down to be heard upon Bill and Answer. That your petitioner Frederick Lord Baltimore should by his Council appear Gratis and hear the said Cause at such Time as should be appointed for the same without being Served with a Subpena for that purpose. That at such hearing and on other necessary occasions Your petitioner Frederick Lord Baltimore and his Heirs and Assigns and his and their Council and Agents should Consent and Agree that a Decree should be pronounced against him and them agreeable in all respects to the true Intent and meaning of the said Indenture and further that Liberty

should be therein reserved for either party to apply to the Court for further directions as they should be advised and to pray no Costs to the Time of the hearing and to Consent that the subsequent Costs should be reserved. That Your Petitioner Frederick Lord Baltimore his Heirs and Assigns should not at any Time oppose such Decree as should be made pursuant to the true meaning of the said Indenture or the signing and Inrolling such Decree And that in Case Your Petitioners the said Thomas and Richard Penn or their Heirs or Assigns should at any time thereafter whether before or after the said Cause in Chancery should be heard be desirous to lay the said Indenture and the matters therein Contained by an humble petition before His Majesty his Heirs or Successors in His Privy Council and humbly to pray his Majestys Royal Allowance Ratification and Confirmation of the said former Articles of Agreement and the said Inrolled Decree and Subsequent Order of the said Court of Chancery and of the said Indenture to be for ever E-established as between the respective proprietaries of the said provinces and Counties for the peace and welfare of the same and of His Majestys Subjects in those parts Your Petitioner Frederick Lord Baltimore his Heirs and Assigns should forthwith upon request join in and become a Co-Petitioner therein or otherwise with his and their own Hands sign a full Consent to such petition at the Foot thereof and should by all other fitting and proper means give his and their full Consent to the same either in his and their own proper persons or by such other means as should be most Valid and Effectual.

That after taking Notice that Your Petitioners the said Thomas and Richard Penn and their ancestors by themselves or some of their Tenants Grantees or Agents under their Right and Title had been and then were in the actual possession of all the Lands Tenements and Hereditaments therein after Granted your Petitioner Frederick Lord Baltimore for the Ends and purposes aforesaid and in order to render the said Indenture most Valid and in Consideration of Five Shillings of Lawful Money of Great Britain to him paid by Your Petitioners the said Thomas and Richard Penn for himself and his Heirs did fully and absolutely Release Renounce and Quit Claim unto Your petitioners the said Thomas Penn and Richard Penn their Heirs and Assigns for ever All that the said Province of Penn-

silvania in America with all and Singular the Rights Royalties Members and Appurtenances thereof And all those Territories and Tracts of Land then Called the three lower Counties of Newcastle Kent and Sussex upon Delaware in America with all and Singular their and each and every of their Rights Royalties Members and Appurtenances the said province and Counties Bounded and to be Bounded according to the Extent Bounds and Limits which were agreed by the said Articles and Decreed and ordered in and by the said Inrolled Decree of the said Court of Chancery and the said Subsequent Order of the said Court of the 29th Day of March 1751 and according to the true Intent and meaning of the said Indenture of July 1760 and the Reversion and Reversions Remainder and Remainders Yearly and other Rents Issues and Profits and Arrears of Rents Issues and Profits of all and Singular the said Province of Pennsylvania and the said Three lower Counties of Newcastle Kent and Sussex and of each of the same And all the Estate Right Title Interest property power prerogative Claim Demand and pretensions whatsoever of your petitioner Frederick Lord Baltimore and his Heirs of in and to the same and every part thereof Provided always and it was thereby Declared that neither the said Indenture nor any Clause therein Contained should Extend to the Right of any Grantee or Grantees and those Claiming under them to any the Farms Lands Tenements or Hereditaments then in the actual possession and occupation of all or any the Tenants or Occupiers of the said Province Lands Hereditaments and premises thereby Released which had been at any Time and in any manner theretofore Granted by or under the Authority of Your petitioner Frederick Lord Baltimore or any of his Ancestors. But that it should be Lawful to and for all such Tenants their and every of their Heirs Executors Adm'ors and Assigns from Time to Time and at all Times to hold and enjoy their said Farms Lands Tenements and Hereditaments and every part thereof for and during such their several and respective Estates Terms and Interests in the same and every part thereof Subject nevertheless to and under the same Quit Rents Reservations and Services to be from thenceforth paid rendered and performed to the proprietaries of the said Province of Pennsylvania for the time being as they the said Tenants and Occupiers and every of them were liable at the Time of and Immediately before the Execution of the said

Indenture to have pay'd rendred and performed to the proprietary of the said province of Maryland: Provided also that neither the said Indenture nor any Clause therein should Extend to the Right of any Grantee or Grantees and those claiming under them to any of the Farms Lands Tenements and Hereditaments which were situate on the West side of the River Susquehannah and within one Quarter of a Mile more North than the East and West Line mentioned in the 6th Article of the said Articles and which had been at any time and in any manner theretofore Granted by or under the Authority of Your petitioner Frederick Lord Baltimore or any of his Ancestors and were then in the actual possession of all or any the Tenants or Occupiers of the said province Lands Hereditaments and premises nor to the Estate Right Title or Interest of any such Tenants or Occupiers in or to the said Lands and premises last mentioned But that it should and might be Lawful for all such tenants their and every of their Heirs Executors Admors and Assigns To hold and enjoy their said Farms Lands Tenements and Hereditaments and every part thereof during all their several and respective Estates Terms and Interests in the same and every of them and every part thereof subject to and under all the same Quit Rents Reservations and Services to be paid Rendered and performed to the proprietaries of the said province of Pennsylvania for the Time being as they were liable at the Time of the Execution of the said Indenture to have paid rendered and performed to the Proprietary of Maryland.

And it was thereby further Witnessed that for the Considerations aforesaid Your petitioner Thomas Penn for himself and his Heirs Executors Administrators and Assigns and your petitioner Richard Penn for himself and his Heirs Exors Admors and assigns Did in like manner acknowledge Testify and Declare and did also Covenant Promise Grant and Agree to and with your petitioner Frederick Lord Baltimore his Heirs Executors Admors and Assigns in manner and form following (that is to say) That the Commissioners who had been last so respectively appointed by the said Charles last Lord Baltimore on his part and by Your Petitioners Thomas and Richard Penn on their part did duly proceed in the Execution of such Commissions and did justly agree upon fix and determine the True Spot or point or place for beginning from whence to measure the due West Line

across the said peninsula which was agreed and Directed by the said articles of agreement and Inrolled Decree That the said Spot or point or place for beginning such Due West Line was and should be at all Times for ever thereafter be established held taken and adjudged to be where the said Commissioners so agreed upon fixed and determined the same to be, namely at a point on the Verge of the main Ocean being at the Distance of 139 perches due East from a Stone fixed by the said Commissioners on the Northern part of the Land called Fenwicks Island near to Four Mullberry Trees there growing which Stone was marked on the side thereof turned to the South with the Arms of the said Charles last Lord Baltimore and on the side thereof turned to the North with the Arms of your petitioners Thomas and Richard Penn.

That the said spot or point or place of beginning such due West Line was and should at all Times for ever thereafter be Esteemed held taken and adjudged to be the point of Cape Hinlopen mentioned in the said articles of agreement of the 10th day of May 1732 at which the East and West Line across the said Peninsula mentioned in the same Articles was meant and Intended to begin That the said Commissioners their Surveyors did in due manner rightly fix and Settle the true Meridian Line and did then proceed justly according to the said Articles and Decree and their respective Commissions and did measure a true West Line from the said spot or point or place of beginning at the East End thereof quite across the said whole peninsula to the Verge on the Eastern side of the said Bay of Chesopeak at the West End thereof in Exact pursuance of and Compliance with the said recited articles of Agreement and Decree and the true Intent and meaning of the same.

That the said Commissioners did find and agree that the said West Line measured quite across the said whole peninsula to the length or Extent of 69 Miles and 298 perches. That the True length and Extent of the said West Line was and should at all Times for ever thereafter be esteemed held taken and adjudged to be 69 Miles and 298 perches neither more or less.

That consequently the Exact middle of such West Line from whence the other Line was to begin which was to run up the said Peninsula 'till it made a Tangent to the Western part of the periphery of the said part of a Circle at the Distance of 12

English Statute Miles Horizontally measured from the Court House in the said Town of Newcastle was and should at all Times for ever thereafter be esteemed held taken and adjudged to be at the Exact distance of 34 of the said Miles and 309 perches so measured West from the aforesaid Spot or point or place of beginning of the said West Line as the same were so measured as aforesaid. That the said Exact middle of the said Western Line as then fixed and for ever agreed would be a very material Bound or Corner Mark between the parties two different Ways so in addition to or rather in ascertainment of that part of the said former Agreement there should be at the joint Expence of the said respective proprietaries parties thereto and their Heirs one or more large or remarkable Stones Erected or Set up and Continued for ever there according to the angle made by the said due West Line and by the said Tangent Line for dividing the said peninsula which Stone or Stones on the Inward side of the same facing towards the East and towards the North should have the arms of your petitioners Thomas and Richard Penn graved thereon and on the outward sides of the same facing the West and towards the South should have the Arms of Your Petitioner Frederick Lord Baltimore Graved thereon.

That your petitioners Thomas and Richard Penn and their Heirs and Assigns should and would within the Space of thirty Days from the Date thereof prepare Execute and Issue under their Hands and Seals one or more Commissions appointing seven impartial and proper persons or any Number of them not less than three as Commissioners on their parts to mark run out Settle fix and Determine all such parts of the said Circle Lines Marks and Boundaries as were not then Completed and to carry the said former Articles of Agreement Decree and Subsequent Order and the Agreements therein contained into full and Compleat Execution in all respects whatsoever agreeable to the plain Intent and true meaning of the same former Articles Decree and Order of the said Indenture.

That such Commissioners should proceed to Execute such Commissions with all fairness and Dispatch. That neither Your petitioner Thomas Penn his Heirs Ex'ors or Adm'ors nor your petitioner Richard Penn his Heirs Ex'ors or Adm'ors nor any of them should at any Time or Times thereafter be consenting to aiding or assisting in or Encourage or promote in any manner



whatsoever or lend his or their or any of their Name or Names towards the commencing prosecuting or Defending any Suit or Suits Cause or Causes whatsoever to be Commenced Prosecuted or Defended in any Court of Law or Equity whatsoever by any of the Tenants of your petitioners Thomas and Richard Penn or either of them or by any of their or either of their Grantees or the Grantees of their or any of their Ancestors whereby the Right of your petitioner Frederick Lord Baltimore his Heirs or Assigns to the said province of Maryland in America with all and singular the Rights Royalties Members and Appurtenances thereof bounded and to be bounded according to the Extent Bounds and Limits which were agreed by the said articles of the 10th day of May 1732 and Decreed and Ordered in and by the said Inrolled Decree of the Court of Chancery and the said Subsequent Order of the said Court of the 29th Day of May 1751 and according to the true Intent and meaning of the said Indenture might be drawn in Question or Controverted in any manner whatsoever. That your Petitioners Thomas and Richard Penn their Heirs and Assigns should and would on his and their parts at all times on request and at the Costs and Charges of your petitioner Frederick Lord Baltimore his Heirs and Assigns make do perform and Execute any further matter and thing (Exclusive of the Acts thereby stipulated to be performed at a joint Expence) which should any way be necessary to be done for rendering the said former Articles of Agreement Decree and Subsequent Order and the said Indenture most perfect Valid Sure and effectual at all Times for ever thereafter.

That your petitioners Thomas and Richard Penn should and would within three Days after your petitioner Frederick Lord Baltimore should have acknowledged the due Execution of the said Indenture in such manner as he had therein before agreed to do cause the same to be Inrolled in his Majestys High Court of Chancery.

That Your Petitioners Thomas and Richard Penn should within thirty Days next after they could or might obtain an office Copy of such Answer as aforesaid which your Petitioner Frederick Lord Baltimore had therein before agreed to put in as aforesaid to the said Bill to be filed for the purposes aforesaid make proper application to the said Court of Chancery to have the said Cause set down for hearing by Consent upon Bill and

Answer at some early Day so soon as the Court should think fit to appoint for that purpose and should and would previously give Notice of such Intended Application either unto your petitioner Frederick Lord Baltimore or unto his Clerk in Court or Solicitor in Order to have a full and proper Consent thereto on the part of Your Petitioner Frederick Lord Baltimore.

That Your Petitioners Thomas and Richard Penn should and would set down the said Cause to be heard at such Time as should on such Application be appointed for the same and should and would by their Council duly attend the hearing of the same.

That on the hearing of the said Cause Your petitioners Thomas and Richard Penn should and would by their Council Consent and pray that all parties might have Liberty to resort to the Court from Time to Time for further Directions in Case any difficulty or Doubt should happen to arise in the Carrying the said former Decree and Subsequent Order or any Decree or Order to be thereafter made in the said Cause into Compleat Execution and should not pray any Costs in the said Cause to the Time of the hearing the said Cause upon such Answer Consent and Submissions as aforesaid or at any other Subsequent Time should Your petitioners Thomas and Richard Penn or their Heirs or Assigns or any of their Council or Agents demand or pray any Costs to be Decreed or Ordered to him or them in respect of the said Suit then Depending. But the said Suit and all proceedings therein should be forthwith dismissed upon a proper application to be forthwith made by your petitioner Frederick Lord Baltimore to the Court of Chancery as for want of prosecution, That your petitioners Thomas and Richard Penn or their Heirs or Assigns should not at any time or in any manner whatsoever oppose such Decree as should be so made upon such Consent as aforesaid in the said Cause to be comenced by Your petitioners Thomas and Richard Penn pursuant to the true intent and meaning of the said Indenture therein before declared or Expressed or the Signing and Inrolling such Decree.

That in Case your petitioner Frederick Lord Baltimore or his Heirs or Assigns should at any time thereafter (whether before or after the said Cause in Chancery should be heard) be desirous to lay the said Indenture and the matters therein before mentioned or any of them by an humble petition before His Majesty

his Heirs or Successors in his or their privy Council and humbly to pray the Royal allowance Ratification and Confirmation of the said former Articles of Agreement and the said inrolled Decree and Subsequent Order of the said Court of Chancery and of the said Indenture to be for ever Established as between the respective proprietaries of the said Provinces and Counties for the peace and welfare of the same and of His Majestys Subjects in those parts petitioners Thomas and Richard Penn and their Heirs and Assigns should forthwith upon request join in and become Co-petitioners therein or otherwise with their own Hands Sign a full Consent to such petition at the foot thereof and should and would by all other fitting and proper means give their full Consent and Agreement to the same either in their own proper persons or by such other means as should be most valid and effectual and for the Considerations aforesaid Your petitioner Thomas Penn for himself and his Heirs Executors Adm'ors and Assigns and Your petitioner Richard Penn for himself his Heirs Ex'ors Adm'ors and Assigns did thereby further Covenant promise and agree to and with Your petitioner Frederick Lord Baltimore his Heirs Ex'ors and Adm'ors and every of them That they and also some or one of the Executors of the said John Penn deceased should on the Day after the Date of the said Indenture upon request to be to them made and for the consideration of the sum of one Shilling only but at the Costs of Your petitioner Lord Baltimore execute unto your petitioner the said Frederick Lord Baltimore and unto the Executors of the said Charles last Lord Baltimore and the Executors of Samuel Ogle and John Sharpe two of the said Ex'ors who are since dead and unto all and every other person or persons claiming or to claim by from or under the said Charles Lord Baltimore and your petitioner Frederick Lord Baltimore or either of them and also unto all and every the Estates Real and personal of the said Charles Lord Baltimore a full Discharge and Release for all and every such Costs as by the said former Decree and Subsequent Order were decreed to be paid by the said Charles last Lord Baltimore or were reserved for the future Consideration of the said Court of Chancery and for all Costs and Charges which your petitioner the said Thomas and Richard Penn and the Executors of the said John Penn could or might Claim against your petitioner Frederick

Lord Baltimore the Executors of the said Charles Lord Baltimore or any other person or persons aforesaid by Virtue of the said Articles Decree and Order and other the proceedings aforesaid mentioned therein That after taking Notice that your petitioner Frederick Lord Baltimore and his ancestors by him or themselves or by some of his or their Tenants Grantees or agents under his or their Right and Title had been from Time to Time and then were in the actual possession of all the Lands Tenements and Hereditaments therein after mentioned to be thereby released by your petitioners Thomas and Richard Penn unto your petitioner Frederick Lord Baltimore and his Heirs It was Witnessed that for the Ends and purposes and from the motives aforesaid and in order to render the said Indenture the most Valid that might possibly be and for and in consideration of five shillings of Lawful Money of Great Britain to your petitioners Thomas and Richard Penn in hand paid by your petitioner Frederick Lord Baltimore Your petitioners Thomas and Richard Penn for themselves and their Heirs did thereby fully and absolutely Release renounce and Quit Claim unto Your petitioner Frederick Lord Baltimore and his Heirs and Assigns for ever all that the said province of Maryland in America with all and singular the Rights Royalties Members and appurtenances thereof Bounded and to be bounded according to the Extent Bounds and Limits which were agreed by the said articles of agreement of the 10th day of May 1732 and Deceed and Ordered in and by the said Inrolled Decree of the said Court of Chancery and the said subsequent Order of the said Court of the 29th of March 1751 and according to the True Intent and meaning of the said Indre and the Reversion and Reversions Remainder and Remainders Yearly and other Rents Issues and Profits and arrears of Rents Issues and Profits of all and Singular the said province of Maryland and all the Estate Right Title Interest property power prerogative Claim Demand and pretensions whatsoever of Your Petitioners Thomas and Richard Penn and their Heirs of in and to the same and every or any part or parts of the same Provided always and it was thereby Declared and agreed that neither the said Indenture nor any Clause Article matter or thing whatsoever therein contained should Extend to the Right of any Grantee or Grantees and those claiming under them to any the Farms Lands Tenements

or Hereditaments then in the Actual possession or Occupation of all every or any the Tenants or Occupiers of the said province Lands Heredits and premises thereby Released or intended or agreed to be Released as aforesaid which had been at any Time or in any manner theretofore Granted by or under the authority of the proprietaries of the said province of Pensilvania for the time being but that it should and might be Lawful to and for all and every such Tenants and Occupiers of the same premises and every part thereof their and every of their Heirs Executors Admors and Assigns from Time to Time and at all Times thereafter to hold and enjoy the said Farms Lands Tenements and Heredits and every of them and every part thereof for and during all and every such their several and respective Estates Terms and Interests in the same Subject nevertheless to and under all and every of the same Quit Rents Reservations and Services to be thenceforth paid rendred and performed to the proprietary of the said province of Maryland for the Time being as they the said Tenants and Occupiers and every of them were liable at the Time of and Immediately before the Execution of the said Indenture to have paid rendered and performed to the proprietary of the said province of Pensilvania provided also and it was thereby further Declared and agreed that neither the said Indenture nor any Clause article matter or thing whatsoever therein contained should Extend to the Right of any Grantee or Grantees or those claiming under them to any the Farms Lands Tenements or Hereditments which were Situate lying and being on the East side of the River Susquehanna and within the space or Distance of one Quarter of a Mile more South than the East and West Line mentioned in the Sixth article of the said articles of agreement of the 10th day of May 1732 and which had been at any time and in any manner theretofore Granted by or under the authority of the proprietaries of the said province of Pensilvania for the time being and were then in the actual possession or occupation of all every or any the Tenants or occupiers of the said province Lands Heredits and premises But that it should and might be lawful to and for all and every such Tenants and occupiers of the said last mentioned Lands and premises and every part thereof their and every of their Heirs Exors Admors and Assigns from Time to Time and at all times thereafter to hold and enjoy the said

Farms Lands Tenements and Hereditis and every of them and every part thereof for and during all and every their several and respective Estates Terms and Interests in the same and every of them and every part thereof Subject nevertheless to and by and under all and every the same Quit Rents Reservations and Services to be from thenceforth paid rendered and performed to the proprietary of the said province of Maryland for the Time being as they the said Tenants and Occupiers and every of them were lyable at the time of and Immediately before the Execution of the said Indenture to have paid rendred and performed to the proprietaries of the said province of Pennsylvania.

That in pursuance of the said last mentioned Indre your petitioners Executed Commissions to certain Commissioners to run the Lines pursuant to the said Indre who made a progress therein but there being not Sufficient Time allowed to finish and Compleat the same Your petitioners did renew such Commissions allowing further Time for the Compleating the same and such Commissrs are now proceeding in the said Work.

That in pursuance of the said Indenture of 1760 Your petitioners Thos. and Richard Penn brought a Bill in the High Court of Chancery against your petitioner Frederick Lord Baltimore to Confirm and Establish the said agreement & your petitioner the said Frederick Lord Baltimore put in his Answer thereto and the said Cause came on to be heard before the Right Honble the Lord High Chancellor of Great Britain upon the 6th Day of March 1762 when his Lordship was pleased to order and Decree that the Supplemental Bill brought by Your Petitioners against the said Thos. & Richard Penn against your petitioner Frederick Lord Baltimore should be dismissed without Costs Your Petitioner Frederick Lord Baltimore consenting thereto & by the Consent of Your petitioner the said Frederick Lord Baltimore it was Deceed that the said Indenture of the 4th day of July 1760 should be confirmed and Established and carried into Execution & that the several proceedings of the Commssioners to fix and Settle the Boundaries of the respective provinces which were antecedent to the Death of the late Lord Baltimore or antecedent to the Execution of the new Commissions by Your petitioners should be likewise Confirmed and Established and the Commissioners were directed to proceed in



the Execution of the new Commissions that had issued by virtue of the said Indre of the 4th July and his Lordship gave no Costs on either side But reserved the Consideration of further Costs and farther Directions and your pet'rs were to be at Liberty to apply to the Court as there should be occasion.

That your pet'rs are desirous as much as in them lye to Quiet the Minds of all Your Majestys Subjects Inhabiting in the lately disputed parts of the said provinces and three lower Counties & to promote the peace and Welfare of those parts and in order to give a further Testimony of their Firm agreement and that a final End and period hath been put to all their Contests and Litigations by the said Agreement of 1760.

Your Petitioners do most humbly pray Your Majesty that Your Majesty will be most graciously pleased to give Your Royal allowance Ratification and confirmation of the said Articles of Agreement of the 10th of May 1732 of the said Inrolled Decree of the 15th of May 1750 of the Subsequent Order of the 29th of March 1751 and of the said Indenture of the 4th of July 1760 of the said Decree of the 6th of March 1762 and every Article Clause matter and thing in them and each of them contained and that the same may be for ever Established as between Your petitioners proprietaries of the provinces of Maryland and Pensylvania and the three lower Counties of Newcastle Kent and Sussex on Delaware in America.

And your Petitioners shall ever Pray &c.

F BALTIMORE  
THO: PENN  
RICH'D PENN.

1775.

*An ACT for the more effectual ascertaining and fixing the limits of the several counties within this government, and for remedying some inconveniences that may arise by the late establishment of the boundaries and divisional lines between the same and Maryland.\**

Preamble.

Whereas in pursuance of certain articles of agreement, made the tenth day of May in the year of our Lord One Thousand

\*See a supplementary act hereto, chap. 231, a.

Seven Hundred Thirty and Two, between the right honorable Charles, Lord Baltimore, proprietor of the province of Maryland and the honorable the proprietaries of these counties of New-castle, Kent and Sussex, and the province of Pennsylvania, and the decree of the Lord High Chancellor of England, bearing date the fifteenth day of March in the year of our Lord One Thousand Seven Hundred and Fifty, for the specific performance and execution of the said articles; and also in pursuance of certain other articles of agreement made, the fourth day of July in the year of our Lord One Thousand Seven Hundred and Sixty, between the right honorable Frederick, Lord Baltimore, son and heir of the said Charles, Lord Baltimore, and the honorable the proprietaries of these counties and the province of Pennsylvania, and of one other decree of the Lord High Chancellor of England bearing date the sixth day of March in the year of our Lord One Thousand Seven Hundred Sixty and Two, for the specific performance of the last mentioned articles; the several lines, mentioned and described in the said articles, and thereby finally agreed upon and settled by the said parties, to be and forever remain the boundaries and divisional lines between the said provinces and counties, have been run by Commissioners, for that purpose appointed and authorized by the said respective proprietors, and marked out in exact conformity to the said articles, with stones, pillars and other landmarks, and described by the said Commissioners in the return of their proceedings under their hands and seals, and in an exact plan or map thereof.

SECTION 2. *And whereas* in the year of our Lord One Thousand Seven Hundred and Sixty-seven a joint petition was preferred to his present Majesty, by the said Frederick, Lord Baltimore, and the proprietaries of these counties and the said province of Pennsylvania, reciting the before mentioned articles and decrees, and setting forth, that their Commissioners were then proceeding in the work; that they the said proprietors were desirous as much as in them lay, to quiet the minds of all his Majesty's subjects, inhabiting in the lately disputed parts of the said provinces and counties, and to promote the peace and welfare of those parts; and in order to give a further testimony of their firm agreement, and that a final end and period had been put to all their contests and litigations by their said agreement of the

year One Thousand Seven Hundred and Sixty, they, by their said petition, most humbly prayed his Majesty, that he would be most graciously pleased to give his royal allowance, ratification and confirmation, of the several and respective articles and enrolled decrees before mentioned, and every article, clause and thing in them and each of them contained, and that the same might be forever established between them; Whereupon his Majesty, by his order in Council dated the eleventh day of January, in the year of our Lord One Thousand Seven Hundred and Sixty-nine, was pleased to signify his royal approbation of the said agreements and proceedings mentioned in the petition of the said proprietaries; whereof as well the proprietaries of the said provinces, as all others whom it might concern, was ordered to take notice, and govern themselves accordingly.

SECT. 3. *And whereas* the honorable the Governor and Commander in Chief of these counties and the province of Pennsylvania, in pursuance of his Majesty's pleasure and permission, by his proclamation bearing date the eighth day of April, in the year One thousand Seven Hundred and Seventy-five, did publish and make known all and singular the premises, thereby requiring (among other things) all officers and other persons, dwelling to the northward and eastward of the lines and boundaries so as aforesaid run and marked, between the province of Maryland and counties aforesaid, to yield obedience to the laws of the said counties and govern themselves according thereto. For the purpose therefore of carrying the intention of the said proclamation and the laws of this government more effectually into execution,

The divisional line between the counties of New Castle and Kent continued and fixed.

SECT. 4. *Be it enacted by the honorable John Penn, esq., with his Majesty's royal approbation, Governor and Commander in Chief of the counties of Newcastle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the Representatives of the freemen of the said counties, in General Assembly met, and by the authority of the same, That* from and after the publication of this act the line dividing the counties of Newcastle and Kent, continued from the mouth of a branch issuing from the main branch of Duck Creek, and opposite part of Enoch Jones' land on the Kent side, and Richard Nash's land on the New Castle side, and running from

thence up the said branch on the several courses thereof, westward six hundred and two perches to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch; from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between those counties and Maryland, where the same crosses the Cyprus Branch, shall be deemed, taken and held, the boundary between the said counties of New Castle and Kent; and that the line between the counties of Kent and Sussex, continued from a fork of Mispillion-creek, at the junction of Tan-Trough-branch, and Beaver-dam Branch, running up the Tan-Trough-branch with the several courses thereof eight hundred and eight perches to the head thereof; thence south westwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a Beaver-dam, on the west side of a Beaver-pond, the original temporary division between Kent, Sussex and Maryland, and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line aforesaid, shall be deemed, taken and held the boundary between the said counties of Kent and Sussex; and that all the persons inhabiting the lately disputed lands within this government shall have and enjoy all the immunities, rights, liberties and privileges, which they could or might be entitled to, as if they had always been acknowledged actually to have resided within the same.

Also, between the counties of Kent and Sussex.

Persons inhabiting the lately disputed lands shall enjoy all rights, privileges &c.

SECT. 5. *And be it further enacted by the authority aforesaid,* That the Justices of the Peace for the several counties of this government may and shall, as soon as conveniently may be, in the Courts of General Quarter Sessions to be held for the said counties respectively, ascertain the bounds and limits of the several ancient hundreds within the same, and lay out such and so many new hundreds as may be found necessary and convenient, and, until the same shall be so fixed and laid out, that the freeholders and other electors who have heretofore resided together and been considered as inhabitants of one and the same district or hundred, and now added to the county of Sussex, may and shall choose their own inspectors and Assessors in the presence of two freeholders in each district or hundred, to be named by John Dagworthy, William Elligood, William Polke, William Holland and Jonathan Bell, esquires, or any three of

Justices shall ascertain the boundaries of the several hundreds &c.

them, which said freeholders are this year appointed to supply the defect of such officers in those hundreds, added as aforesaid to Sussex county, as by law are constituted judges in electing said Inspectors and Assessors, and also to maintain and support the poor and the public roads, and do all and every other act or thing in like manner as the inhabitants of any ancient hundred within this government might or could do before the passing of this act.

Passed September 2, 1775.

“It is apparent how erroneously the act recites the proclamation of George III. last stated.”

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In 1792 or 1793, it is difficult to say which, as the only source from which the information was obtained, is the mutilated “Calm Appeal” of McKeon and Physic, in Philadelphia Library, No. 12,378, *Duodecimo*, the Delaware Legislature unanimously passed three resolutions, as follows:

1st. “That the issuing of any warrant for the surveying any vacant or unappropriated lands in this State, by any person or persons whatever other than such as may act under the authority of this State, is an usurpation of the sovereignty of the State. •

2d. “That it is the sense of the two Houses that no surveyor in this State ought or legally can execute any warrant issued in the name of any person not authorized by this State for that purpose.

3d. “That it be recommended to the citizens of this State to take up no warrants and to accept of no patents or deeds whatever from John Penn the younger, and John Penn, or either of them or their agents or attorneys.”

1793.

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*An ACT concerning vacant and uncultivated lands.\**

Whereas the minds of the good people of this State are much alarmed and disquieted by warrants for surveying lands, being

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\* See after chap. 45. c. an act for opening a Land Office for the sale of such, &c.—and chap. 57. c. a supplement thereto.

issued without the authority of the State; and it appears that the peace thereof will be greatly disturbed by such proceeding: Therefore for preventing the evil consequences thereof,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That, if any person or persons, inhabitants of this State, shall, after the passing of this act, take or receive any warrant, or shall make, or cause to be made, any survey in consequence of such warrant, or shall take or receive any grant, deed, indenture, or other writing, from any person or persons not acting under the authority of this State, for any vacant and uncultivated lands in this State, the person or persons so offending shall forfeit and pay for every such offence, the sum of One Hundred Dollars, to be recovered in any Court of General Quarter Sessions of the Peace and Gaol Delivery. Taking any warrant, making survey, or receiving any patent, &c., for vacant land, from persons unauthorised by the State. Penalty.

SECT. 2. *And be it enacted,* That no warrant issued since the fourth day of July, One Thousand Seven Hundred and Seventy-six, shall be laid or surveyed by any surveyor; nor any patent granted, or deed received, on any warrant or survey, either issued or made since the fourth day of July aforesaid, under the penalty of One Hundred Dollars for each and every such warrant, survey, patent, or deed, to be recovered as aforesaid.\* No warrant issued since July 4, 1776, shall be laid, nor patent granted, &c. Penalty.

Passed February 2, 1793.

*An ACT for opening and establishing a Land Office within this state, and for the sale of all vacant and uncultivated lands therein. (a)* 1793.

Whereas it appears to this General Assembly that large quantities of vacant and uncultivated land are within this state, which at the present do not, and heretofore have rendered no support to the government: Wherefore, (b) Preamble.

\* See chap. 45. c. sects. 10, 11, that nothing in this act (chap. 10) shall be construed so as to vacate or annul any warrant issued between Jan. 1, 1776, and Jan. 1, 1792, or any survey, patent, deed, or grant, made or obtained thereon, between the said times; but such title to any lands in this State is there confirmed.

(a) See after chap. 57. c, a supplement hereto—and chap. 102. c, an additional supplement.

(b) See before chap. 10. c.



Surveyors to be  
commissioned.

Recorders to is-  
sue warrants of  
location.

Within what  
time the plots  
shall be returned  
to the examiner.

If approved,  
shall be sent to  
the Recorder;  
who shall make  
out a grant and  
present the same  
to a Board of  
Commissioners,  
&c.

List of warrants  
and surveys to be  
returned to the  
Treasurer.

SECTION 1. *BE it enacted by the Senate and House of Representatives of the state of Delaware in General Assembly met, That* the Governor shall commissionate in each county some Surveyor of skill and integrity: And that it shall and may be lawful for any person or persons to apply to the Recorder of Deeds in each county, who is hereby directed and required to issue a special warrant, under his hand and the seal of office, directed to the Surveyor of the county, authorizing him to survey and locate the land or lands therein mentioned, and to return a plot thereof, which shall contain the courses and distances of the several lines thereof, a description of the boundaries, creeks, branches and rivulets surveyed or lying within the lines of the said plot, the names of the owners of the contiguous or adjoining lands, and the quantity of land thereby surveyed, to an examiner, to be appointed and commissioned by the Governor; (c) which said plot as above described, shall be returned, within six months after the date of such warrant, to the examiner as aforesaid, who shall examine the same, and if it be imperfect, shall return it to the said Surveyor for amendment; but if the same shall not be returned for amendment, but be approved by the examiner, which approbation shall be certified on the said plot, signed by the examiner, and returned by him, together with the plot, to the said Recorder, who shall, upon payment of the purchase money to the State Treasurer, and a receipt produced as is hereinafter directed to make a grant, and present the same to a Board of Commissioners in each county, consisting of three suitable persons to be appointed by the Governor for the time being, for their approbation, and being attested by them, and signed by the Governor for the time being, the seal of the state shall be annexed thereto. (d)

SECT. 2. *And be it enacted, That* the Recorder in each county as aforesaid, shall make out a list of every warrant and survey made out and returned to his office, containing the names of the person or persons in whose favour the same may have issued, the date of the warrant, the date of the survey, and the quantity of land contained in such survey, and transmit the same to the State Treasurer; and in case the person or persons in whose

(c) To wit, one in each county by sect. 11, of chap. 57. c.

(d) See said chap. 57. c. sects. 3, 4, 7, 8, that such grant shall be by patent, and the form thereof prescribed, &c.

favour the said warrant or warrants issued, shall not, within nine months after the approbation of the said examiner, pay or cause to be paid to the State Treasurer, at the rate of Fifty Cents for every acre of land included in such survey, then and in such case, the said land shall be adjudged, deemed and taken to be still vacant and unappropriated; and it shall and may be lawful for any person or persons willing to purchase the same to apply to the State Treasurer, at any time after the expiration of the said nine months, and pay to the State Treasurer the purchase money for the lands contained in such survey; and upon a payment made to the State Treasurer, for the lands contained in any survey, he shall give a receipt to such person or persons, specifying therein the date of the warrant, the name of the person or persons in whose favour it had issued, the date of the survey, and the quantity of land contained in such survey; which receipt shall be carried to the Recorder, who shall file the same in his office as of record, and thereupon shall immediately make out a grant, as before directed, to such person or persons producing such receipt, reciting therein the particulars mentioned in such receipt. (c)

In case of default in payment of the purchase money, the lands shall be deemed vacant.

How persons willing to purchase the same may proceed.

SECT. 3. *And whereas* disputes may arise between the inhabitants on the location of lands as aforesaid: *Be it enacted*, That whatever different claims or pretensions may arise, or any caveat shall be entered before the Recorder, against any warrant and survey, at any time before the same shall be certified to the State Treasurer as aforesaid, it shall and may be lawful for the aforesaid Board of Commissioners, upon notice of such caveat having been given, ten days previous to the sitting of the said board, to the person or persons in whose favour such warrant and survey was made, to hear and determine all matters in variance, in a summary way, according to the laws of the land, and equity and good conscience; and such determination shall be entered as of record by the said board. *Provided*, That, in all cases a preference shall be given to such person or persons as have lands contiguous to, or adjoining such vacant or uncultivated and other lands, and to all persons who may have settled

Disputes on the location of lands shall be determined by the Board of Commissioners

To whom a preference shall be given.

(c) See chap. 57. c. sect. 4, a similar provision with the extension of the time for paying at the rate of Fifty Dollars Per 100 acres, to two years from date of warrant—in chap. 90. c. time of payment extended to one year more—and in chap. 101. c. sect. 5, further extended for another year.

How it shall be decided in certain cases.

Recorders to enrol all warrants, surveys, &c.

Repealed.

What proceedings may be had by persons who have not complied with the terms of their warrants, granted since the first of January, 1776.

Of appeal from the board.

any lands, not included or held under any warrant issued previous to the first of January, One Thousand Seven Hundred and Ninety-two, in case such person or persons shall apply for warrants, within six months after the appropriation of such lands as aforesaid to the use of the state; and in case two or more shall have adjoining or contiguous lands as aforesaid, then the said board shall do what to them seems equitable and right; and no warrant shall issue to any one person for any greater quantity than two hundred acres of land. (f)

SECT. 4. *And be it enacted*, That the Recorders, in the respective counties of this state, shall, at their own expense, procure record books well bound and of good paper, wherein shall be recorded the warrants issued, the surveys made thereon, and returned with the certificate of the examiner, the grants made in consequence of such surveys, all caveats entered before the Recorder, with the determination of the Board of Commissioners thereon. (g)

SECT. 5. *And be it further enacted*, That where any warrants have been granted since the first day of January, One Thousand Seven Hundred and Seventy-six, and the terms of such warrants have not been complied with, by the persons to whom they were granted, in all such cases it shall and may be lawful for the persons to whom such warrants were granted, to apply to the Board of Commissioners aforesaid for the respective counties, and upon the payment of the caution money to the State Treasurer as before directed, and agreeably to the original terms contained in such warrants, such persons shall receive certificates attested by the said Board of Commissioners, to be signed by the Governor for the time being, under the seal of the state; which said certificates shall be returned into the Recorder's Office, to be filed as of record, within three months. (h)

SECT. 6. *Provided nevertheless, and be it enacted*, That nothing in this act contained shall prevent an appeal from the Board of

(f) See chap. 57. c. sects. 3, 5, 9, 10—chap. 90, c. sect. 2—chap. 101. c. sects. 2, 5, 6, 7—and chap. 102. c. for further and other powers given to the said Board of Commissioners and for their regulation.

(g) See said chap. 57. c. sects. 4, 8—chap. 101. c. sects. 3, 4—and chap. 102. c. for other duties, &c., prescribed by the Recorders.

(h) See chap. 57. c. sects. 3, 13, this sect. 5, repealed and supplied.

Commissioners to the Supreme Court, which shall be held in the respective counties. (i)

SECT. 7. *And be it enacted*, That the variation of the compass shall, in all cases, be according to the usage and custom heretofore practised in different parts of the state; And that all grants made by virtue, or under the authority of this act shall convey to the grantee or grantees an estate in fee simple.

Of the variation of the compass.  
Nature of the estate granted.

SECT. 8. *And be it further enacted*, That nothing in this act contained shall impeach, impair, or in any manner whatever call into question, the title to any lands in this state held under any grant, warrant, survey, re-survey, or patent, made or issued before the year of our Lord One Thousand Seven Hundred and Seventy-six; but that all such titles shall be good and available in law and equity. (k)

Repealed.

Confirmation of the titles of land held under any grant, &c. prior to 1776.

SECT. 9. *And be it enacted*, That each member of the Board of Commissioners, in the respective counties, shall be allowed for every day's attendance, One Dollar and Fifty Cents. (l)

Allowance to the Board of Commissioners.

The Recorder in each county shall have for every warrant signed and sealed, Fifty Cents.

Recorder.

For every caveat entered, Ten Cents.

Every copy thereof, under seal, Forty Cents.

Every final determination, Twenty Cents.

Filing every survey, Ten Cents.

Every grant made out and ready for signing, Fifty Cents.

Recording every warrant, survey, certificate, grant, caveat, and final determination, One Cent for every line of twelve words. (m)

And the Surveyor shall have for every plot, Two Dollars, and every day's attendance in surveying, Two Dollars.

Surveyors

And the Examiner shall have for every plot examined, Fifty Cents.

Examiner.

(i) By sect. 10 of chap. 57. c. such appeal is to be to the High Court of Errors and Appeals.

(k) This section supplied and repealed in chap. 57. c. sects. 1, 2, 3, 13.

(l) See chap. 101. c. sect. 2, an additional allowance to Commissioners which with all expenses arising and accruing on the hearing and trial of any caveat since November 1, 1795, to be paid by the party failing in its claim.

(m) By chap. 101, sect. 4, the Recorder of Deeds in the counties of Newcastle and Kent for every day's attendance on the Board of Property, to be allowed One Dollar per Day, to be paid out of the monies arising from the Land Office.

Every certificate thereof, Twenty Cents.

And the State Treasurer shall have for every receipt, Fifty Cents: Which said fees shall be paid by the party, at whose request the said services are done.

Warrants, &c., made since January 1, 1776, and before January 1, 1792, not to be annulled.

SECT. 10. *And be it enacted*, That nothing in the act entitled, *An act concerning vacant and uncultivated lands*, (n) shall be construed to extend to vacate, or annul, any warrant issued since the first day of January, 1776, and before the first day of January, 1792, nor any survey, patent, deed, or grant made or obtained thereon between the times aforesaid.

Confirmation of such grants.

SECT. 11. *And be it enacted*, That the title to any lands in this state, held under any grant, warrant, survey, re-survey, or patent made or issued between the said first day of January, 1776, and the first day of January, 1792, shall be good and available in law and equity. (o)

J. Miller, esq. impowered to procure from Pennsylvania copies of all warrants, &c., which relate to lands in this State.

SECT. 12. *And whereas*, from the former communication between Delaware and Pennsylvania, as to jurisdiction and government, many of the warrants, surveys, patents, and grants for lands within the state of Delaware, were filed and recorded in the Land Office in the city of Philadelphia, whereby many of the inhabitants of this state have sustained greivous hardships and great expense, in procuring authenticated copies of such original papers and records: wherefore, *Be it further enacted*, That Joseph Miller, esquire, be and he is hereby appointed, authorized, and impowered, on the part of this state, to attend in the city of Philadelphia, and permission from the proper authority of the state of Pennsylvania being first had, to transcribe, or procure to be transcribed, under his care and direction, in one or more well bound books, in folio, all such warrants, surveys, re-surveys, patents, grants, and other original papers, as may be found in the said office, and which in any wise relate to lands, tenements, and hereditaments within this state; being by him also carefully and diligently compared with the originals, in the said office; and that he be also authorized and impowered, on the part of this state, to solicit from the said office, the originals of all such warrants, surveys, patents, grants, and other papers, when the same can be had and procured without injuring or defacing other records of the said office; to the end that the

In what cases he shall solicit the originals.

Where to be deposited.

(n) For which see chap. 10. c. Ante.

(o) See also chap. 57. c. sect. 3.

same, being first examined and approved by the Legislature of this state, may be deposited in the Recorder's Office at Dover; as public records.

SECT. 13. *And be it further enacted*, That Joseph Miller shall receive such compensation for his services in the premises, as shall be hereafter directed by law. Compensation to be made him.

SECT. 14. *And be it enacted*, That the folio book, certified and signed by Thomas M'Keon, and now lodged in the office of the Master of the Rolls in the town of New-Castle, containing the transcripts of original papers, made under the direction of the said Thomas M'Keon, shall be removed from the said town of New-Castle to the town of Dover, and shall be there deposited in the Recorder's office. (p) Record book to be removed from New Castle to Dover.

SECT. 15. *And be it enacted*, That no warrant shall be issued, nor any proceedings had under this act, before the first day of October next. When proceedings to commence under this act.

*Passed June 19, 1793.*

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41 *Supplement to an act, entitled, An act for opening and establishing a Land Office within this State, and for the sale of all vacant and unlocated lands therein.* (a) 1794.

Whereas the right to the soil and lands within the known and established limits of this state, was heretofore claimed by the crown of Great Britain: *And whereas*, by the definitive treaty between his Britannic Majesty and the United States of America, his said Majesty relinquished all rights, proprietary and territorial within the limits of the said United States, to the citizens of the same, for their sole use and benefit; by virtue whereof the soil and lands within the limits of this state became the right and property of the citizens thereof, and who at the time of passing the act to which this is a supplement, had, and now have, full power and authority, by their Representatives, to dispose of the same for their sole benefit, emolument and advance. Preamble.

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(p) See chap. 199. a. 9 Geo. III, declaring this book a public record, and in sect. 5, to be kept at New-Castle.

(a) For this see chap. 45. c. Ante, and for an additional supplement, chap. 102. c. Post.



tage. *And whereas*, the claims of the late and former pretended proprietaries of this state, to the soil and lands contained within the same, are not founded either in law or equity; (b) and it is just, right, and necessary, that the citizens thereof should be secured in the enjoyment of their estates, rights and properties.

SECTION 1. *Be it therefore enacted by the Senate and House of Representatives of the state of Delaware in General Assembly met,*

Confirmation of all patents, warrants and grants, made before 1st January, 1760, and of all surveys made in pursuance thereof, exonerated from all rents, fines, and services.

That all patents, warrants, and grants, for lands within this state, made or granted by James heretofore Duke of York, the proprietaries of Maryland, or the pretended proprietaries of this state, or their or any of their Agents, Officers or Commissioners, duly authorized to grant lands within the same, at any time before the first day of January, in the year of our Lord One Thousand Seven Hundred and Sixty, and all surveys made in pursuance of any such patents, warrants, or grants, shall be, and at all times hereafter shall be deemed and taken to be good and valid both in law and equity, fully, clearly, and absolutely exonerated, discharged and exempted of and from all manner of rents, fines, and services whatsoever; and the said patents, warrants, and grants so fully, clearly and absolutely exonerated, discharged and exempted, are hereby ratified, confirmed, and established forever, according to such estate and estates, rights and interests, and under such limitations and uses, as in and by the said patents, warrants and grants, are expressed, directed and appointed, and no other.

Persons claiming lands under any warrant or grant, made before the 1st January, 1760, shall on payment of the officer's fees only, be entitled to patents.

SECT. 2. *And be it enacted,* That any person or persons legally claiming any land within this state, under any warrant or grant, issued or made before the first day of January, in the year of our Lord One Thousand Seven Hundred and Sixty aforesaid, for which lands no patent hath yet been issued, are hereby declared to be entitled to a patent for the same, on proceeding in the manner hereinafter directed to procure patents for other lands under this act, without paying any sum or sums of money for the same, other than the legal fees to the several officers through whom such patent is to be procured: *Provided*, That no patent, to be issued under this act, for any lands held under any warrant or grant, made or issued before the said first day of January in the year aforesaid, shall operate so as in any manner to invalidate, or take away, the right of any person or persons

But the same shall not invalidate the rights of persons claiming under prior grants.

(b) See, *Inter Alia*, the recitals in chap. 229, a.

holding lands under any warrant or grant, prior in date to the warrant or grant under which such patent shall be issued.

SECT. 3. *And be it enacted*, That where any warrants have been issued since the first day of January, in the year of our Lord One Thousand Seven Hundred and Sixty, and before the first day of January, One Thousand Seven Hundred and Ninety-two, and the terms of such warrants have not been complied with by the person to whom such warrants were granted, it shall and may be lawful for any person or persons legally claiming under any such warrants to apply to the Commissioners appointed, or to be appointed, under the act to which this is a supplement, for a certificate specifying the quantity of land which the person so applying shall be permitted to hold under such warrant, and upon paying to the State Treasurer the sum of Fourteen Dollars for every hundred acres, contained in such certificate, and producing a receipt therefor, from the said Treasurer, to the Recorder of Deeds for the county in which the lands lie, the said Recorder shall make out a patent for the said land, in which patent the State of Delaware shall be the grantor, and the person or persons named in such certificate shall be the grantee or grantees; which patent being produced to the Governor of this state, he shall sign the same, and cause the seal of the state to be affixed thereto; and every patent made in pursuance of this act, and authenticated in manner aforesaid shall convey to the person or persons named as the grantee, or grantees therein, and to his, her, and their heirs and assigns, an absolute and unconditional estate in the land mentioned in such patent.

How persons may proceed to obtain patents, who have not complied with the terms of their warrants, issued since the 1st January, 1760, and before the 1st January, 1792.

Patents to be signed by the Governor, &c.

Nature of the estate conveyed by them.

SECT. 4. *And be it enacted*, That the Recorder in each county shall, in the month of November annually, make out a list of all warrants by him granted, and the surveys made in pursuance of such warrants, and returned to his office, containing the names of the person or persons in whose favor the same have issued, the date of the warrant, the date of the survey, and the quantity of land contained in such survey, and transmit the same to the State Treasurer; and in case any person in whose favor any such warrant hath issued or shall issue, shall, within two years

Lists of warrants and surveys to be returned to the Treasurer.

Persons obtaining warrants shall upon payment of the purchase money, be entitled to patents; but in case of default, the lands to be deemed vacant.

And may be patented to others.

What proprietary warrants shall not be deemed grants, &c.

Surveys made in pursuance of such warrants subject to be caveated.

How the Commissioners shall determine thereon.

after the date of such warrant, (c) pay or cause to be paid to the State Treasurer the sum of Fifty Dollars for every hundred acres, and in proportion for any greater or lesser quantity of land in such survey, he shall be entitled to a patent for the same; but if any person who heretofore hath or hereafter may obtain a warrant under this, or the act to which this is a supplement, shall not pay the money for such land within the time aforesaid, such land shall still be deemed vacant and unappropriated; and it shall and may be lawful for any other person or persons to apply to the State Treasurer, at any time after the expiration of two years from the date of such warrant, and upon paying the money for the quantity of land mentioned in such survey, at the rate aforesaid, such other person shall be entitled to a patent for such land.

SECT. 5. *Be it further enacted*, That the proprietary warrants, granted to survey lands to the use of the proprietor, shall not be deemed grants for the quantities of lands in the said warrants mentioned, but shall be deemed and taken to be, applications for land made by the person or persons in such warrants mentioned; but all surveys made, or to be made, in pursuance of such warrant, shall be subject to be caveated before the Board of Commissioners, appointed under the act to which this is a supplement; which said Commissioners shall hear and determine, on all such caveats, in such manner, that no survey made, or to be made, in pursuance of any such proprietary warrant, shall deprive the owner of lands held under any patents, or other warrants, of the privilege of taking up and securing such quantity of land adjoining such patents, or other warrants, as will make up to such patents or other warrants, the quantity of two hundred acres, including the land held under such patents or other warrants; and so also, that no survey made in pursuance of such proprietary warrants, shall include any improvement made by any other person before the date of such survey, and such quantity of land adjoining such improvement as added to the same will make two hundred acres; and after all caveats against the confirmation of such surveys shall be determined, the said Commissioners shall give to the person or persons

(c) By chap. 90. c. sect. 1. Anno 1795, this time of payment extended to one year more—and by chap. 101. c. sect. 5. Anno 1796, a further extension of one year.

legally claiming under such proprietary warrants, a certificate specifying the courses and distances of the lines including the lands such person or persons shall be permitted to hold under such proprietary warrants; and the person or persons obtaining such certificate, shall be entitled to patents for the lands contained in such certificate, on paying to the State Treasurer, for the use of the state, the sum of Fifty Cents for every acre thereof: *Provided*, That no survey made in pursuance of any such proprietary warrants, shall be permitted to invalidate, or in anywise call in question, any person or persons title to any patent or other warrant, included within the bounds of such proprietary warrant, either prior or subsequent to the date thereof; nor to include more than two hundred acres of land for every person named in any such warrant; and the residue of the quantity of land mentioned in such proprietary warrant, if any, shall be deemed vacant and unappropriated land.

Persons obtaining certificates from the Commissioners, &c., shall be entitled to patents.

But such surveys shall not invalidate any person's title to any patent included within the bounds of such proprietary warrant, &c.

SECT. 6. *And whereas* former proprietaries of the late province, but now State of Maryland, for the purpose of having lands improved, have heretofore made leases to persons for life or lives, for lands then within the jurisdiction of Maryland aforesaid, but now within the established limits of the State of Delaware; which leases have in many instances, expired by the death of the person or persons for whose life or lives the same were at first made: *Be it therefore enacted*, That the heirs, or other legal representatives, of such lessees, shall be entitled to the preference of warrants and patents for all such leased lands, upon the terms expressed in this act for unappropriated lands. (d)

Who shall be entitled to the preference of warrants and patents for lands leased by former proprietaries of Maryland.

SECT. 7. *And be it enacted*, That patents made pursuant to this act, shall run in the following manner: THE STATE OF DELAWARE to all to whom these presents shall come, greeting: Know ye, That for and in consideration of the sum of        paid into the treasury of this state, by A. B. of        county, there is granted unto him the said A. B. a certain tract of land situate in        county, containing        acres [describing particularly, in words at length, the courses and distances of the several lines, and the boundaries thereof,] with the appurtenances: To have and to hold the said tract of land, with the appurtenances, to

Form of the patents.

(d) See chap. 102, c. Anno 1796, for another provision in favor of Maryland grants.

him the said A. B. his heirs and assigns forever, and his and their absolute and unconditional estate and property, free and clear of all reservations of rents or services whatsoever. In testimony whereof                      esquire, Governor, hath heretunto set his hand, and caused the seal of the state to be affixed, the                      day of                      in the year of our Lord,                      and in the year of the independence of the said state.

To be recorded  
in the offices for  
recording of deeds.

Fees.

Time and places  
of the sitting of  
the Commission-  
ers.

Their oath.

Chap. 45, c.

And per diem  
allowance.

Of appeal from  
the Commission-  
ers.

SECT. 8. *And be it enacted*, That all patents granted in pursuance of this act, shall be recorded in the office for recording of deeds for the county in which the lands granted by such patents respectively lie; for the recording of which said patents, the respective Recorders of Deeds in this state shall be allowed the like sums as for recording deeds of the same length, and for an endorsement of such patent being recorded, and his hand and seal of office thereto, the same sum as in other cases of the like nature. (c)

SECT. 9. *And be it enacted*, That the Commissioners appointed, or to be appointed, under the act to which this is a supplement, shall set at the Court House for the county in which they reside, on the first Tuesday of April next, and on their own appointments at all times thereafter, for the purpose of discharging the duties enjoined on them by this and the before recited act; but, before they enter on the said duties, each of them shall take an oath, before the Prothonotary, or Clerk of the Supreme Court, in the respective counties of this state, *That he will to the best of his skill and judgment, faithfully and impartially discharge the trust in him reposed, by act of Assembly, intituled, An act for opening and establishing a Land Office within this state, and for the sale of all vacant and uncultivated lands therein, and the supplement thereto, without fear, favor, or affection, or any partiality whatever*; and each of the said Commissioners shall be allowed the sum of Two Dollars for every day's attendance, to be paid out of the moneys arising from the sale of vacant lands within this state. (f)

SECT. 10. *And be it enacted*, That if any person shall consider him, her, or themselves, aggrieved by any determination of

(c) For which see chap. 27, c. sect. 8.

(f) All expenses, including the above allowance, arising on any caveats after November 1, 1795, to be paid by the party failing in his claim, with an additional sum of Two Dollars to each Commissioner, by chap. 101, c. sect. 2.



the Commissioners appointed, or to be appointed as aforesaid, it shall and may be lawful for such person or persons to appeal from the determination of the said Commissioners, to the High Court of Errors and Appeals, whose determination shall be binding and final and conclusive to all parties. (g)

SECT. 11. *And be it enacted*, That the Governor shall appoint some fit person in each county respectively as examiner, whose duty and compensation shall be the same as is directed to the examiner, in the act to which this is a supplement. (h)

The Governor to appoint an examiner of each county.

SECT. 12. *Be it further enacted*, That all the streets in the town of Lewes, and the bank and marshes between Front-street and Lewes creek, and between South-street and Canary creek, which have heretofore been considered as common and public property, shall not be subject to be taken up by any warrant to be issued in pursuance of this act, or the act to which this is a supplement, but shall from and after the passing of this act be vested in the inhabitants of the town of Lewes, and the citizens of this state in general, for their common use and benefit; and all warrants already issued to take up any part of the said streets, bank, or marshes, are hereby vacated and made void; and the said streets shall be and remain open as common highways under such regulations as other highways in this state; and if any person shall in any manner obstruct the said streets or highways, he shall forfeit and pay the same sum as by law he would forfeit and pay for obstructing any other highway within this state, to be recovered in the same manner that such forfeitures, by the laws of this state, are directed to be recovered.

The streets of Lewes, &c., shall not be taken up by any warrant, &c.

But shall remain open, as common highways.

Penalty for obstructing them.

SECT. 13. *And be it enacted*, That the fifth and eighth sections, and every other matter and clause, in the act to which this is a supplement, which is by this act altered, amended and otherways provided for, are hereby declared to be repealed, and made null and void; anything in the said act to the contrary notwithstanding.

Part of Chap. 45, c. repealed.

Passed February 7, 1794.

(g) In chap. 45, c. sect. 6, an appeal to the Supreme Court was admitted.

(h) See sect. 1, of chap. 45, c. for his duty, &c.





## Sketch of the Title to the Land and the Right of Government in West New Jersey.

A commission was issued by the authority of King Henry VII. of England, to John Cabot, March 5th, 1495, to make discoveries in America in the name and by the authority of the King, &c.

June 24th, 1497, Cabot discovered and took possession of New Foundland, part of the continent of America. The right of discovery gave absolute title to the soil. "This was an original acquisition—which before belonged to no man—and now began to be the property of a particular person," &c.

These rights remained in the crown of England to the reign of Charles II., King, &c.

March 13th, 1664, Charles II., King, &c., conveyed to James, Duke of York, certain territories in America, generally called "Virginia," of which territory New Jersey was part. Learning & Spicer, 3.

"Together with *all* the lands, islands, soiles, rivers, harbours, mines, minerals, quarries, woods, markets, waters, lakes, *fishings*, Learning & Spicer, 4. *hawkings*, *huntings*, and *fowlings*, and *all other royalties*, &c.

"With full and absolute power and authority to correct, punish, pardon, *govern*, and *rule* all such subjects of us, our heirs and successors, as shall from time to time adventure themselves into any the parts and places aforesaid," &c., "according to such laws, &c., as by our said dearest brother, *or his assigns*, shall be established," &c., "so that the same be not contrary to the laws and statutes of this our realm of England," &c. Learning & Spicer, p. 5.

June 24th, 1664, James, Duke of York, conveyed to John Lord Berkley and Sir George Carteret that part of the aforesaid grant known as New Jersey. Learning & Spicer, p. 8.

Description of New Jersey. Leaming & Spicer, 10. "Adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east by the main sea, and part by Hudson's River, and bath upon the west Delaware Bay or river, and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware Bay, and to the northward as far as the northermost branch of the said Delaware Bay or river, which is forty-one degrees and forty minutes of latitude," &c.

Leaming & Spicer, p. 10. "And also all the rivers, mines, minerals, woods, fishings, hawkings, huntings, and fowlings, and all other royalties," &c., *in as full and ample manner as the same is granted to the said Duke of York by the before-recited deed, &c.*

Leaming & Spicer, p. 12. John Lord Berkley and Sir George Carteret agreed upon certain "constitutions of government," February 10th, 1664, and the eastern part of the Province was soon considerably peopled.

Smith's History of New Jersey, p. 61. This was the first constitution of New Jersey, and continued entire till the province was divided in 1676.

Graham's History of United States, Vol. II., p. 322. Philip Carteret was appointed Governor, and arrived with a few colonists from England, November, 1665, and settled at Elizabethtown.

The troubles that existed in the Colony during his administration, need not be mentioned here.

March 18th, 1673-4, John Lord Berkley conveyed his undivided half part of New Jersey to John Fenwick, *absolutely and in fee simple.*

Edward Byllynge, of Westminster, Middlesex, England, brewer, through misfortunes in trade became bankrupt, and his creditors suspected he had some interest in the territory conveyed by Berkley to Fenwick. An inquiry was instituted by William Penn as arbitrator, and it was disclosed that such was the fact as to nine-tenths of the property conveyed.

That Byllynge's creditors might derive advantage therefrom, and Fenwick have only his real interest, a conveyance of the said undivided half of New Jersey was made as follows :

February 10th, 1674-5, John Fenwick and Edward Byllynge conveyed the one-half of New Jersey to William Penn, Gawen Lawrie, and Nicholas Lucas, (consideration of £400 to Fenwick and five shillings to Byllynge,) as releasees to *uses*—*i. e.*, to *use* of Fenwick in fee as to one-tenth, and to use of releasees themselves in fee as to nine-tenths.

Salem Deeds,  
No. 1, p. 4. Of-  
fice of Secretary  
of State, Trenton,  
&c.

The trust for the creditors of Byllynge is not set out in the deed; but the deeds *from* the releasees recite a trust for Byllynge's creditors.

See Liber B 2,  
p. 681. Office of  
Secretary of State,  
Trenton, N. J.

The difficulty with Edward Byllynge and his creditors delayed the sale of land by John Fenwick in New Cæsarea, and his settlement of the same as well.

The records show the first deed to be dated March 15th, 1674-5, thirty-six days after the date of the deed to Penn, Lawrie, and Lucas, and about two months before the date of the partition of the ten lots to Fenwick, hereinafter mentioned.

By the first deed (March 15th, 1674-5,) he conveyed to John Adams, clothier, late of Reading, in Berkshire, E., and Elizabeth his wife, (eldest daughter of said Fenwick,) two thousand acres of land. The boundaries were not defined, but, as the deed says, "to be taken out of, set forth, and surveyed out of the said undivided moiety of the said tract of land within said Province of New Cæsarea, or New Jersey, in such manner and form, and according to such laws and rules, as by him, the said John Fenwick, or the Governor in his absence appointed by him, with the advice of his council, the General Surveyor, by him, the said John Fenwick, likewise nominated and appointed, by virtue of their several commissions, be thought fit in the most equal way and method with other the proprietors and freeholders within the whole moiety aforesaid, or otherwise within such part of the whole as the said John Fenwick shall from time to time reserve to him, his heirs and assigns, forever."

Salem Deeds,  
No. 1, p. 11, Tren-  
ton.

March 24th, 1674-5, John Fenwick conveyed to William Hughes, cooper, of the parish of St. Paul, Shadwell, in Middlesex, England, and Deborah his wife, five hundred acres, after the same manner.

Salem Deeds,  
p. 8, Trenton.

February 25th, 1674-5, he conveyed to William Malster, gentleman, late of the city of Westminster, Middlesex, and Kath-

Salem Deeds,  
p. 6, Trenton.

arine his wife, and Francis Bowyer, late of the parish of Her, Buckinghamshire, five thousand acres of land in the same manner.

Salem Deeds,  
No. 1, Trenton.

These deeds were executed in England, and if the Patroon with his colony arrived in the Delaware river in June, 1675, many like conveyances for land were made on shipboard, as the dates will verify.

The mode adopted for the locating or defining the boundaries of these tracts of land was substantially the same as that afterwards adopted by the London and Yorkshire proprietors, and still used by the Council of Proprietors of East and West New Jersey.

It seems that there was a partition between Fenwick and the releasees. This is set out by a memorandum dated May 7th, 1675, on the back of the deed aforesaid to Penn, Lawrie, and Lucas as releasees to uses, which is in these words:

Salem Deeds,  
No. 1, p. 4, Trenton.

“MEMORANDUM.—That the seventh of the third month, one thousand six hundred seventy and five, John Fenwick drew the following numbers, viz.: 20, 21, 26, 27, 36, 47, 50, 57, 63, 72, and his proportion of the one moiety of New Cesaria or Jersey, being divided into one hundred lots, and that he had accepted the same, and the trustees for the other lots were satisfied therein.

“In testimony of which, they have interchangeably set their hands.

Signed thus:

“WILLIAM PENN.

“GAWEN LAWRIE.

“JOHN FENWICK.

“Witness:

“ROBERT SQUEB, JR.

“WILLIAM ROYDON.”

Thus the grant to William Penn, Gawen Lawrie, and Nicholas Lucas became, in effect, simply for the ninety equal divided parts, being the estate actually owned by Edward Byllynge when John Lord Berkley conveyed said moiety of New Jersey to John Fenwick (March 18th, 1673.)

John Fenwick proceeded to appropriate his divided ten parts by removing from England with a colony of purchasers, and occupying the same, (June, 1675,) and united with said pur-

chasers and emigrants in establishing a form of government in manner following :

"That the Governor and magistrates shall be chosen by the advice and consent of the said proprietors and freeholders every year, and ten or twelve persons to be elected as aforesaid to be a council, to remain one year, and then one-half of them to be put out and so many more chosen in their places, and so from time to time, after a year's service, to make a new election of a Governor and a half of the council, or a continuance of him or them, as shall be most convenient, *who shall have full power* to make such laws and customs for the good of the Colony and suppression of vice as to them shall seem most necessary and convenient."

Salem Deeds,  
No. 1, p. 61. Office of  
Secretary of State,  
Trenton.

Signed June 28th, 1675, by John Fenwick and thirty-two other persons.

John Fenwick was elected Governor, and thirteen of the signers elected magistrates and council.

Salem Surveys,  
1676. Office of  
Secretary of State,  
Trenton.

A Surveyor General, Register of Deeds, Surrogate, Sheriff, &c., were appointed, and a government for "Fenwick Colony" put in motion and authority.

Courts were organized, writs were issued to the Sheriff, wills were proven and letters of administration granted, suits tried and decided, and all the forms of law were observed as under any well-organized government.

Minute Book  
of Salem Courts.  
Office of Secretary  
of State, Trenton.

This system was continued for about six years, and until the sitting of the first Legislature at Burlington, N. J., December 21st, 1681, as established under the "Concessions and agreements of the proprietors, freeholders and inhabitants of West New Jersey," March 3d, 1676.

Many of the persons who had subscribed to the forms of government in Fenwick Colony, June 28th, 1675, also attached their names to the "concessions and agreements," and accepted the plan as therein proposed, enlarged and improved upon their own.

Leaming & Spicer's  
Laws, 409,  
410.

Among these were most of the Swedes and Finns who had settled on the eastern shore of the Delaware river previous to the coming of the English, who bore allegiance to the Dutch rulers at New York, and acknowledged their Deputy Governor and magistrates at New Castle and Upland.

By that act they gave their adherence to the government established under the "concessions and agreements" before named,



joining with other citizens to make it efficient and satisfactory to the people.

This fact bears much significance when the troubles existing at that time between John Fenwick and Governor Andross (who was acting by a commission of the Duke of York under his second patent from the King) are considered. It involved the interests of these prior settlers on the Eastern shore, who were claimed as coming within the control of the New York authorities.

The endorsement of the "agreements" showed their preference and which went far to end the whole difficulty.

Liber T. 486,  
Trenton.

July 17th, 1675, (but after most of the before-mentioned titles were executed,) John Fenwick conveyed by a lease for one thousand years, to John Edridge, of Shadwell, Middlesex, E., tanner, and Edmund Warner, citizen and poulterer, of London, E., the said ten lots in West New Jersey, called "Fenwick Colony," to secure the payment of certain debts by him owing to said Edridge and Warner and other persons.

Publications of  
the New Jersey  
Historical Society.  
Vol. IV., p. 70.

This grant was the source of much trouble to Fenwick and the purchasers of his land; and in his will his executors are required to make a settlement with Edridge and Warner, they having taken advantage of the contract, under the mortgage, to the injury of Fenwick.

Liber T. 486,  
Trenton.

This curious document was not entered in the registry office until about ninety years after its date, it being found among the papers of William Penn in Philadelphia, by William Peters, the agent of the family.

The signature of the grantor was proven by Grant Gibbon, May 11th, 1764.

See the books  
in the office of  
the Secretary of  
State, Trenton,  
N. J.

By agreement, a registry of deeds for lands sold by John Fenwick in West New Jersey was kept in London, as well as one in Salem, which last-named shows the care taken to preserve the titles to the soil, and the good faith in which the covenants of the Patroon were carried out.

Upon the arrival of these adventurers into "Fenwick Colony," they found the lands along the river, within the bounds of their territory, settled by the Swedes and Finns. It was not the policy of the Patroon to question the title of these people to the lands

they occupied, and, as an assurance of his desire for them to remain, the Surveyor General was directed to lay out their several tracts and define the boundaries of the same.

Immediately upon the settlement of the boundaries and title to the land occupied by the Swedes and Finns, the "adventurers and emigrants into Fenwick Colony" proceeded to accomplish the same object for themselves.

As the land was selected, the surveys made, returned, and approved by the magistrates and council, the Patroon executed deeds to the purchasers.

These were entered of record, and perfected the title to the land according to the original agreements. These records are in good preservation, and on file in the office of the Secretary of State, in Trenton, N. J.

July 1st, 1676, Sir George Carteret, of the first part; William Penn, of the second part; Gawen Lawrie, of the third part; Nicholas Lucas, of the fourth part; and Edward Byllynge, of the fifth part, executed the *Quintipartite* deed, for the purpose of making a division of New Jersey. Leaming & Spicer's Laws, 61.

The assignment of the westerly part to William Penn, Gawen Lawrie, and Nicholas Lucas is described as follows: "Extending southward, westward, and northward along the sea coast and the before-mentioned bay and river commonly called and known by the name or names of Delaware Bay and Delaware River, from the said south partition point before mentioned to be on the east side of Little Egg Harbor, unto the said north partition point hereinbefore mentioned," &c. Description of West New Jersey—the Quintipartite deed. Leaming & Spicer, 61.

"With all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings, and fowlings, and all other royalties, governments, powers, forts, franchises, harbors," &c.

Why John Fenwick did not become a party to this deed is not apparent, except that Edridge and Warner at that time held the legal estate to his tenth.

August 13th, 1676, Richard Hancock, as Surveyor General, and by order of John Fenwick; chief proprietor of Fenwick Colony, surveyed one thousand and forty acres of land to Stephen Yerians, Lasse Hendricks, Mathyas Sparkleton, and Erick Salem Records, Liber A, p. 13. Office of Secretary of State, Trenton.

Yerians, planters, at Fymtown Hooke, in Fenwick Colony, (formerly called Pompome Hooke,) on the eastern shore of Delaware River. This survey had a Delaware River front of one and one-quarter miles, extended into the country about the same distance, and was generally known as the "Fimtown Tract;" and would lie wholly within the twelve-mile circle if the same was continued east of the Delaware River. [See map.]

Salem Records,  
Liber A, p. 13,  
Trenton.

August 19th, 1676, a like quantity of land was surveyed to Mathyas Neilson, Mathyas Mattason, and Peter Oulson, planters, at Boughtown, on the eastern shore of Delaware River. This survey measured more than three-quarters of a mile along the river, with a depth of two miles into the forest, and generally known as the "Boughtown Tract." This survey would lie wholly within the twelve-miles circle if the same was continued east of the Delaware River. [See map.]

Salem Records,  
Liber A, p. 13,  
Trenton.

August 11th, 1676, three hundred acres of land were surveyed to John Errickson, Barbara and America Errickson, his daughters, and Henry Errickson, his servant, at Great Staine Hook, in Fenwick Colony. This survey also bounded on the river nearly half a mile, with sufficient depth to contain the quantity of land called for, and would also lie wholly within the twelve-miles circle if continued east of the Delaware River. [See map.]

Salem Records,  
Liber A, p. 22,  
Trenton.

August 8th, 1676, six hundred acres were surveyed to Lasse Cornelius, Andra Anderson, Mathyas Johnson, and America Henry (widow), of the town of West Fenwick, planters. This tract would also lie wholly within the twelve miles circle, if continued east of the Delaware river. [See map.]

Other, smaller surveys, were made to people of the same nativity, all of which fronted on the river, situate between Salem creek on the south and Oldman's creek on the north.

The accompanying map of that part of the county of Salem that would be within the limits of the circle if continued east of the river, has been made from the best attainable data, but which, from the lapse of time since the original locations, and the gradual abandonment of the survey lines, must be defective in some particulars.

The principal creditors of Edward Byllynge were Thomas Hutchinson, of Beverly; Thomas Pierson, of Benwicke, yeo-

man; Joseph Helmsley, of Great Kelke, yeoman; George Hutchinson, of Sheffield, distiller; and Mahlon Stacy, of Hansworth, tanner, all of the county of York, and to whom some of the other creditors assigned their claims, which together amounted to £2,450.

In satisfaction thereof, William Penn, Gawen Lawrie, Nicholas Lucas, and *Edward Byllynge*, by deed dated March 1st, 1676-7, conveyed said creditors seven-ninetieth parts (undivided) of ninety-hundredths of said West New Jersey, and in said deed described as follows:

See Liber B 1,  
p. 131. Office of  
Secretary of State,  
Trenton, N. J.

"Seven full, equal, and undivided nynetieth parts of the aforesaid nynety equal and undivided hundred parts of all that westernly part, share, and portion of all that and those other part and parts, share and shares, portion and portions, of all the said tract of land and premises."

"And all and every the mines, minerals, woods, fishings, hawkings, huntings, and fowlings," &c.

In satisfaction of other debts, amounting to £1050, the same grantors, by deed of the same date, conveyed to the same grantees three-ninetieth parts (undivided) of ninety-hundredths of said West New Jersey. The foregoing conveyances set out that William Penn, Gawen Lawrie, and Nicholas Lucas, held the estate in trust for Edward Byllynge, his heirs and assigns, and that said grants were made at the request of Edward Byllynge, evidenced by his becoming a party thereunto.

Liber B 1, p.  
138. Office of  
Secretary of State,  
Trenton, N. J.

The grantees in the two above-named deeds represented *two interests*—1st, the Yorkshire owners; 2d, the London owners. But to which of the two Edward Byllynge was the more largely indebted, does not appear.

The sale and conveyance of undivided interests in the lands in West New Jersey, by the same grantors, were continued, and within one year the emigration largely increased.

The owners of the ten shares (Byllynge's creditors) also sold of their parts of the estates, and induced many to join the enterprise, who become good and useful citizens.

Commissioners were selected to come to New Jersey, representing the separate interests—not only the two interests above mentioned, but the interests of all other creditors.

John Pemford, Thomas Olive, Daniel Wills, and Benjamin Scott, were the London Commissioners; and Joseph Helmsley,

Smith's History  
of New Jersey,  
p. 92.

Gordon's History of New Jersey, p. 39.

Robert Stacy, Richard Guy, Thomas Foulke, and John Kinsey, were the "Yorkshire" Commissioners. (John Kinsey died soon after landing.)

They came in the ship *Kent*, Gregory Marlow, master, and landed at New Castle, August 16th, 1677, and were sent out to manage the estate of the proprietors in West New Jersey.

The two deeds, dated March 1st, 1676-7, represented ten-ninetieths of ninety-hundredths, as Penn, Lawrie, and Lucas had but ninety-hundredths, which left in the possession of William Penn and others eighty-ninetieths of ninety-hundredths of West New Jersey, and which whole interest of—*i. e.*, eighty-ninetieths of ninety-hundredths, and ten-ninetieths of ninety-hundredths, in all ninety parts of one hundred parts—were represented by said Commissioners sent out as above mentioned.

The first plan of the Commissioners was to divide the territory into two parts, and hold the lands in severalty.

Gordon's History of New Jersey, p. 98.

The Yorkshire Commissioners chose the lands between the Rancocas creek and the Falls, and the London Commissioners selected that below Timber creek. The first commenced a settlement at Burlington, and the second made a settlement at Gloucester.

Gordon's History of New Jersey, p. 39.

After some time, this plan was abandoned, the London people removed to Burlington, and the territory remained in common.

The main street (to and from the river) was made the division between the Yorkshire and London owners, as arranged in the paying out of the town of Burlington.

Two days after the signing of the deed from William Penn and others to the creditors of Edward Byllynge (March 1st, 1676-7), herein last noticed, the "Concessions and agreements of the proprietors, freeholders, &c., of West New Jersey," were also signed. This was before any person interested in the ninety-hundredths, as held by Penn and others, had left England to settle in West New Jersey. These concessions and agreements contained all the elements, powers, and franchises necessary to

establish a government under the authority of the people as granted by the crown, not inconsistent with the laws of England.

Chapter 3, provided the manner of electing representatives to make laws, and that the "tenths" shall be the political divisions of the Colony. Leaming & Spicer, p. 390.

Chapter 6, required the Commissioners to provide convenient places for wharves, keys, harbours, and land for public houses.

Also, "that all the inhabitants within the said Province of West Jersey have the liberty of fishing in *Delaware river*, or on the sea coast, and the liberty of hunting and killing any deer," &c.

Chapter 7, that seven years quiet possession shall bar others' claims, &c.

Chapter 13, that the common law or fundamental rights and privileges of West New Jersey are not to be altered by the Legislative authority or free Assembly hereinafter mentioned, &c., but that the Legislative authority is constituted according to these fundamentals. Leaming & Spicer, pp. 409, 410, 411.

Chapter 24, provided that an office of record for deeds, &c., be kept in London and in this Province.

Chapter 39, provided that all laws shall conform to the laws of England, and not against the concessions and fundamentals.

Chapter 40, power to constitute all courts, to limit and enlarge their powers, appoint officers, &c.

Chapter 44, power to divide the Province into hundreds, or other divisions, to give names thereto, &c. Leaming & Spicer, 409, 410, 411.

The first general free Assembly for the Province of West New Jersey met at Burlington, N. J., November 21st, 1681, pursuant to a call by Samuel Jennings, Deputy Governor. Edward Byllynge was Governor by appointment of the proprietors in England, but not finding it convenient to come to New Leaming & Spicer, 423. Smith's History New Jersey, 126.



Jersey, made Samuel Jennings his Deputy, who so continued for about three years. All the "tenths" were represented, and various laws passed necessary for the protection and encouragement of the emigrants.

In 1682, the territory of West New Jersey was divided into two parts, called the "Jurisdiction of Burlington," and the "Jurisdiction of Salem," for the better convenience of the people in judicial matters. Other divisions soon followed, not necessary to be mentioned here, and the tenths were gradually lost sight of in the election of members to the Legislature.

Liber E F, 135.  
Office of Secretary  
of State, Trenton.  
4

Soon after the first sitting of the said West New Jersey Legislature, however, John Fenwick conveyed to William Penn (March 23d, 1682,) all his right and estate in the moiety of New Jersey, including expressly the tenth reserved to him by the release to uses, excepting one hundred and fifty thousand acres called "Fenwick Colony."

John Fenwick divided his tract of land into three allotments—the Salem, the Alloways, and the Cohanzie—the bounds of which, taken as a whole, remain in doubt.

Oldman's Creek on the north and Cohansey Creek on the south, the Cumberland county line on the east and the Delaware River on the west, are sufficiently correct for present purposes.

"The Libertie of Cohanzie," as laid out and sold by Fenwick in 1676, shows that his territory extended as far south as that stream; and "the Libertie of Alloway," as laid out and sold in lots by Fenwick in 1676, shows that his territory extended as far east as those grants.

Johnson's History  
of Salem, p.  
66.

"The manor of West Fenwick," as fixed by Fenwick in 1682, extended from Oldman's Creek along the river to Salem Creek. The grant of "Finntown Point" in 1676, and the devise of the "Manor of Cesarac" in 1683, shows his Colony extended along the river to the Cohansey.

Jno. Fenwick's  
will. Salem Records,  
Trenton.

These conveyances show generally what John Fenwick considered the extent of "Fenwick Colony," or what was included in the reservation of one hundred and fifty thousand acres in his deed to Penn.

The Legislature of West New Jersey, sitting at Burlington, N. J., after November 21st, 1681, passed laws for Salem county

—appointed Judges, Clerks, Surrogates, Sheriffs, &c., for the same.

At every session of said Legislature from November 21st, 1681, to the surrender to, and acceptance of the government by the Queen in 1702, Salem county was represented.

Learning & Spicer's Laws of New Jersey.

Although John Fenwick did not sign the "concessions and agreements," yet he was returned as a member in 1683, but died before he acted as a member of that body.

The bounds of Salem county were not defined by law until 1694.

The time for holding courts in Salem county was fixed by law. In 1682, Salem town was made a "port of entry," and James Neville appointed Collector of the Revenue.

Learning & Spicer's Laws of New Jersey.

In the same year a "market" was appointed to be held at Salem town.

The appointment of officers and the authority of the laws of the Legislature of West Jersey, does not appear to have been objected to or resisted by John Fenwick.

John Fenwick died December, 1683. His will bears date August 7th, 1683, and was admitted to probate May 2d, 1684.

Extracts from this document may be properly inserted here.

"I John Fenwick late of Binfield in the Countie of Berks with<sup>n</sup> the Kingdom of England Esq the late absolute Lord or Chief Proprietor by law & survivorshipp of the Province of New Casaria or New Jersey, and now of Fenwick Colony who doth hereby as he hath in the hazarding of my life appeal to the Almighty God and doe now appeale to him who is my witness that I never cheated any man nor went about to cheate, circumvent nor defraude Edward Billing. But he Gawin Lawrey and and others his ereddite<sup>s</sup> and others his Faccon hath most covet liaisly and most unxtianly delt w<sup>th</sup> me as I have often declared and p-t'cularly in my just elaim and remonsterance; whome I doe freely forgive & heartyly desire God the Searcher of all hearts to make them sencible of itt, that he may forgive them also.

Liber No. 2,  
Salem Wills. Of-  
fice of Secretary  
of State, Trenton.

\* \* \* \* \*

"Item. I give and bequeath Fenwick Grove w<sup>ch</sup> I have made a Manor unto Fenwick Adams. \* \* \* \* \*

“And in the mean time my Executors shall have liberty to keep Court Leets and Court Barons in my said Manor house.

“*Item.* I will and bequeath unto the s<sup>d</sup> Fenwick Adams \*  
\* \* \* \* \* my houses and lands at  
Fenwick Ivy which I have likewise made a Manor w<sup>h</sup> is to  
containe the land from the mouth of Fenwick river to the mouth  
of Monmouth river, and up the s<sup>d</sup> river above William Penton’s  
plantacon and soe to run in a straight line to Fenwick creek and  
down the said creek by Mark Reeves plantacon and soe down to  
the mouth of Fenwicks river. \* \* \* \* \*

“*Item.* I give and bequeath unto my three grand children and  
heirs Fenwick Adams, Samuel Hedge the younger and John  
Champneys \* \* \* all that tract of land lying upon the  
River heretofore called Cohanzey w<sup>ch</sup> I will hereafter have called  
Casaria River and w<sup>ch</sup> is known by the name of the Towne neck  
and my will is that it together with the land on the other side  
w<sup>ch</sup> is called Shrewsbury neck and other the lands thereunto be-  
longing w<sup>ch</sup> is contained in my Indian purchase and soe up the  
Bay to the mouth of Monmouth river and up Monmouth river  
to the head or furthest branch thereof and soe in a straite line to  
the head of Casaria river, all w<sup>ch</sup> I will to be called the Manor  
of Casaria, and y<sup>t</sup> there shall be a cittie erected and marshes and  
lands allowed as my executors shall see convenient \* \* \*  
\* \* \* and the Fenwicks dividient shall joine to the Towne  
and Bacons creek, where, my will is, there shall be a house  
erected and called the Manor house for keeping of courts.  
\* \* \* \* \*

“*Item.* \* \* \* \* \* I appoint Mr  
Samuel Hedge my son in law to be my Secratary and Register  
for his life where I would have his office kept. \* \* \*

“*Item.* My will is y<sup>t</sup> my Exers shall have the whole power  
of my estate untill Fenwick Adams comes of age and untill  
Samuel Hedge the younger come to the age of one and twenty  
years and untill John Champneys comes to the age of one and  
twenty—to lett sett, sell and dispose of my whole estate for the  
paying of my debts and improving my estate. \* \* \*

"*Item.* My will is y<sup>t</sup> my Exers doth settle the Towne of New Salem according to my p<sup>p</sup>-posalls, ord<sup>s</sup> and agreements under my hand and theirs. \* \* \* \* \*

My will is that my Executors shall likewise after their setting forth the Towne of Cohanzick y<sup>t</sup> they first agree upon the lotts y<sup>t</sup> I would have equall if they think fitt to give every freeholder a lott upon condicon they build upon it—as my Exers shall think fitt and to allow such large priviledges and immunities as w<sup>ch</sup> shall be according to the Kings Letters patents w<sup>ch</sup> impowers me and my heires as by several meane grants appear. \*  
\* \* \* \* \*

"*Item.* \* \* \* \* \* I do also authorize and appynt Mr Samuel Hedge my son in law to be the secratary to my Exrs if he will accept thereof \* \* \* \* \* and my will is that William Wilkinson be Clarke to my Court Leets and Court Barons \* \* \* \* \* and I doe appoynt and authorize Daniel Smith my beloved friend to be the Coroner of my Colony. \* \* \* \* \*  
\* \* \* \* \*

And further I doe nominate and appoynt Govenor William Penn my much esteemed friend to take upon him the trouble of being one of my Exr's and for his ease of carrying on all the Trust aforementioned and settling of my Colony according to his noble and xtian promises and agreements ords and methods w<sup>ch</sup> hath (been) observed and executed by me ever since my arrival \* \* \* \* \*

I doe likewise appoynt John Smith of Smithfield and Samuel Hedge of Hedgefield and Richard Tindall of Tindalls Bowery (my s<sup>d</sup> Survy'r Gen'l) which I desire in all love to be my Exeers \* \* \* \* \*

And further my will is y<sup>t</sup> Edmond Warner and John Edridge be brought to an accompt in order to the reconveying of the Lease of one thousand yeares, for they chose the collateral security to pay themselves and never gave me a just accompt above four score pounds and ten pounds w<sup>ch</sup> I left in their hands to pay my debts, according to my remonstrance The righteous God above is my wittnesse that itt is true in sum and substance and y<sup>t</sup> they with the assistance of their confederates y<sup>t</sup> have beene the cause of my trouble for this eight yeares by

false imprisonments, illegally seising of my estate and blasting my good name and taking away my credit, by all w<sup>ch</sup>, I, my children and planters have been damnified many thousand pounds, and this is truth. And I declare this to be my last will and testament."

The witnesses to this document were Thomas Yorke and Thomas Webley.

James Nevill, Edward Wade, and Andrew Thompson, sitting as Judges in the Court at New Salem (May 2d, 1684), allowed the probate, and Samuel Hedge, as Clerk, entered the same of record.

The deed from John Fenwick to William Penn bears date Liber E F, p. 135, Trenton. March 23d, 1682, and conveys "all his (Fenwick's) right claim and estate in the whole half part of New Jersey \* \* \* and all the estate he is entitled to by survivorship in the same \* \* \* always excepting the quantity of one hundred and fifty thousand acres to the said John Fenwick his heirs and assigns \* \* \* called 'Fenwick Colony' \* \* \* being part of the aforesaid tenth \* \* \* with the power and privilege henceforth to *hold and keep* Court Leets and Court Barons \* \* \* the said John Fenwick his heirs and assigns (for such privileges) to pay to William Penn a royalty of two Buckskins yearly on the twenty-ninth day of September if demanded \* \* \* the same to be conveyed free from all mortgage claims, &c."

This deed does not appear of record until the year 1741, when the signature of Samuel Hedge, a subscribing witness, was proven by Isaac Decou, before John Allen, Esq., one of the Judges of the Supreme Court of New Jersey.

This grant extinguished all the estate of John Fenwick as one of the proprietors of West New Jersey. By the deed of February 10th, 1674, to Penn, Lawrie, and Lucas, he had conveyed all but his tenth, which, in that deed, was declared to be held to his use. Salem Deeds, No. 1, p. 4, Trenton.

This new deed to Penn alone, in 1682, put William Penn in possession of all his (Fenwick's) divided interest in said ten lots (excepting the one hundred and fifty thousand acres,) all other right of John Fenwick, except the one-tenth, which included the

one hundred and fifty thousand acres, in the one-half of New Jersey, having been before conveyed by the deed of February 10th, 1674, aforesaid.

The death of John Fenwick so soon after the arrival of himself and associates in West New Jersey, still more complicated the affairs of the Colony and the title to the soil.

These troubles were best understood by himself, and, had he lived, would have been equitably settled. His will shows his endeavor to explain to his executors what he desired in this regard, and which they appear to have faithfully carried out.

The many complications, however, into which he had fallen, was the cause of much delay and vexation on their part, and in the sales of land under the will of the Patroon, the executors had many difficulties to contend with.

The contracts made by Fenwick before he left England, for unlocated surveys, had to be carried out,—the sales made by Edridge and Warner by authority given in their mortgage, must be regarded,—as well as the claims of other creditors who were importunate in their demands upon the property now to be disposed of.

Richard Tindall was Surveyor General, by appointment of John Fenwick, and made the surveys in accordance with the directions of the executors.

A copy of one of these conveyances, hereunto annexed, will sufficiently illustrate the manner in which the title was perfected in the purchaser.



## MARY HOLME 2000 ACRES OF MARISH

To all people to whome this present writing shall come

Liber B, Salem  
Deeds, p. 82, &c.

William Penn p'riector of the Province of Pennsylvania, and p'riector of Salem Tenth in ye p'vince of West Jersey, John Smith of Smithfield Samuel Hedge of Hedgefield and Richard Tindall of Tindalls Bawery in the s<sup>d</sup> County and p'vince of West Jersey Send<sup>th</sup> Greeting

Whereas John Fenwick Esq late p'priector of Fenwick Colony w<sup>th</sup>in the s<sup>d</sup> p'vince of West Jersey deceased by his last Will and Testament Did nominate and appoynt them the s<sup>d</sup> William Penn, John Smith, Samuel Hedges and Richard Tindall, to be his Exectrs as in and by his s<sup>d</sup> Will relacon being thereunto had doth and may more at large appeare.

Now Know Yee that for and in consideracon of the sum of five shillings currt silver money in hand paid unto ye s<sup>d</sup> John Fenwick as alsoe for divers other good causes and valuable consideracons them ye s<sup>d</sup> William Penn, John Smith, Samuel Hedge and Richard Tindall hereunto moveing they the said William Penn, Samuel Hedge, John Smith and Richard Tindall have granted bargained sold aliened enfeoffed and confirmed, And by these presents Doth grant bargain sell alien enfeoffe and confirme unto Mary Holme the wife of John Holme of Philadelphia in the Province of Pennsylvania Gent and to her heires and ass<sup>s</sup> forever All that tract of Marish containing 2000 acres seituate lyeing and being on Delaware River and joyneing on Samuel Nicholson land and the land called Anns Grove and Locuss Island as by a certificate under the hand of Rich<sup>d</sup> Tindall Surveyor Gen<sup>l</sup> may appeare, Together with the Islands Rivulets profitts comodities and other hereds and appurtenances thereunto belonging or appertaining And all the estate right title interest p'ptic claime and demand w<sup>th</sup>soever of in or to the same and the revercon and revercons remainder and remainders thereof.

To have and to hold all the s<sup>d</sup> Two thousand acres of Marish p'mises and every pte and p'cell thereof unto her the s<sup>d</sup> Mary Holme and to the heires and as<sup>s</sup> of her the s<sup>d</sup> Mary Holme forever and to no other use intent or purpose whtsoever, yielding

and payeing therefore yearley and every year the yearly rent of one English shilling on ye 29th day of September unto the heires Exer<sup>s</sup> or As<sup>s</sup> of the said John Fenwick deceased And the s<sup>d</sup> William Penn, John Smith, Samuel Hedge and Richard Tindall for themselves their heires Exrs, Admr, and As<sup>s</sup> Doth covenant and grant to and w<sup>th</sup> her the s<sup>d</sup> Mary Holme her heires Ex<sup>rs</sup> Adm<sup>r</sup> or As<sup>s</sup> That she the s<sup>d</sup> Mary Holme her heires Exrs, Admr, and Ass<sup>s</sup> shall and may hold and enjoy all the s<sup>d</sup> two thousand acres of Marish and p<sup>'</sup>misis and receive and take the rents issues and p<sup>'</sup>fitts thereof from time to time and at all times hereafter w<sup>th</sup>out the lett, evieion or disturbance of them ye s<sup>d</sup> Exr, their heires and As<sup>s</sup> or the heires or As<sup>s</sup> of the s<sup>d</sup> John Fenwick deceased or any or either of them or of or by any other p<sup>'</sup>son or p<sup>'</sup>sons w<sup>ht</sup>soever lawfully claiming or to claime by from or under them or any or either of them for or in respect of any right title or interest w<sup>ch</sup> them or any or either of them shall or may have or claime unto the s<sup>d</sup> two thousand acres of Marish and p<sup>'</sup>misis soe granted as aforesaid or any pte or p<sup>'</sup>cell thereof, and not otherwise freed and discharged or otherwise well and sufficiently saved harmless of and from all incumbrances w<sup>ht</sup>soever done or suffered by them or any or either of them, in the meantime.

In Witness Whereof the s<sup>d</sup> John Smith, Samuel Hedge and Richard Tindall have hereunto set their hands and scales belonging to the Manu<sup>r</sup> the 13th day of June Anno Dom 1694.

Signed	JOHN SMITH	} [L. s.]
	SAM'L HEDGE	
	RICH'D TINDALL	

Signed sealed delivered and acknowledged before us.

JNO. WORLIDGE	} Justices.
JONAT. BEECE	

Recorded ye 29th day of June 1694.

SAM'L HEDGE  
Recorder

In 1683 an act was passed by the Provincial Legislature as follows:

"XIII. *And be it enacted by the authority aforesaid, and hereby resolved,* That the proprietary, &c., of the Province of Pennsylvania be treated with in reference to the rights and privileges of this Province to, or in the Delaware River.

"XIV. *And further,* That (with the Governor and such and so many of his council as he shall think fit,) the Assembly nominate and hereby appoint William Welch, Samuel Wills, and William Peache to treat in the aforesaid premises."

June 11th, 1683, William Penn, as Governor of Pennsylvania, also appointed commissioners to meet those appointed on the part of West New Jersey in reference to the river Delaware. [See Attorney General Gilchrist's "The State of the Question," pages 11, 12, &c.]

The position of William Penn was a peculiar one. By the deed of February 10th, 1674, he was made one of the trustees to ninety parts of West New Jersey.

March 23d, 1682, John Fenwick conveyed to him all his right in the ten parts of the same territory (excepting one hundred and fifty thousand acres.)

In the same year, Edmund Warner conveyed to William Penn his share of thirty-two thousand acres purchased of John Fenwick, and May 2d, 1684, he became one of the executors of the will of John Fenwick, with discretionary power in the disposition of his (Fenwick's) real estate in Fenwick Colony.

Beside the authority to have located and convey land under the will above named, the right to locate and sell land under his deed of March 23d, 1682, existed.

This difficulty was anticipated, and eleven days after the proof of the will the following agreement was entered into:

"Several things discoursed of to be argued upon between William Penn, proprietor and Governor of Pennsylvania and territories, and Samuel Hedge, John Smith, and Richard Tindall, executors of Mr. John Fenwick, the said William Penn being proprietor by conveyance or deed from the said John Fenwick, may from time to time take up land and dispose of land for the planting

and improvement of the Colony, providing always that the heirs and assigns of the said John Fenwick have the reserved number of one hundred and fifty thousand acres, that the same may from time to time be taken up, planted, or disposed of for the use appointed by his will for that purpose; that the said Samuel Hedge, John Smith, and Richard Tindall do condescend to that the said William Penn get the neck between Salem Creek and Oldman's Creek, so far as the same is unsold or disposed of by John Fenwick, shall be and is hereby allotted to be disposed of or settled by William Penn from time to time for the royalties of such lands as are disposed of, he making full reprise for the same; that John Smith agreeth to resign his five hundred acres in the towne for five hundred acres elsewhere in the same jurisdiction, reserving to him a double town lot, each lot being fifteen acres, the remainder to be common until taken by warrants as town lots—except sixty acres for a town and a commandechant to the proprietor, William Penn; that the lots already laid out before the first day of the eighth month ensuing the date hereof, be settled by others paying the value of said lots, as it is adjudged in open court; that there may be a general warrant granted by the said William Penn to the surveying the tenth, enabling him to re-survey all tracts completed as of more than may be coming to his agent for the time being.

“Dated Salem, 13th 2d month, 1684.

(Signed,)

“WILLIAM PENN.

“SAMUEL HEDGE.

“JOHN SMITH.

“RICHARD TINDALL.

“Witnesses:

“ARTHUR COOK.

“JAMES NEVILLE.”

In this agreement, William Penn recognized the right and estate of John Fenwick in the ten parts, and that the conveyance from Fenwick to himself for the same was valid and sufficient in law.

That his right to make surveys in said tenth lay between two natural boundaries, excepting always such parts thereof as had been before appropriated by the said Fenwick, with a general warrant to locate and re-survey within the limits mentioned.

Proceedings of  
New Jersey His-  
torical Society,  
Vol. IV., p. 14.

The eastern boundary of this territory was Salem Creek to the line of Thomas Piles' ten thousand acres, (now Pilesgrove township,) and by the same to Oldman's Creek, the western boundary being Delaware River, making the limit within the twelve-miles circle, if the same be continued east of the Delaware River.

In 1693 an act was passed by the Provincial Legislature as follows:

"Whereas, the whalery in Delaware Bay has been in so great a measure invaded by strangers and foreigners that the greater part of the oyl and bone recovered and got by that employ, hath been exported out of the Province, to the great detriment thereof, to obviate which mischief, *Be it enacted by the Governor, Council, and Representatives of this Assembly met and assembled, and by authority of the same,* That all persons not residing within the precincts of this Province or the Province of Pennsylvania, who shall kill or bring on shore any whale or whales within Delaware Bay or elsewhere within the boundaries of this government, shall pay one full and entire tenth of all the oyl and bone made out of said whale or whales, unto the present Governor of this Province for the time being."

In 1694 an act was passed to change the bounds of Salem county as follows:

"That the jurisdiction of Salem county shall extend from Berkley River on the north to the river Tweed, formerly called Back Creek, on the south, and is hereby named and from henceforth called the county of Salem."

And in the year 1700 the bounds were further enlarged as follows:

"That all persons inhabiting *on the river Tweed*, being the lower bounds of Salem county, and all settlements below unto the bounds of Cape May, shall from henceforth be annexed to and be subject to the jurisdiction of the court of the county of Salem until it shall be otherwise ordered by the General Free Assembly of this Province."

This extended the bounds of Salem county from Oldman's Creek or Berkley River on the north to Prince Maurice River on the south.

The many acts and resolves of the Legislature relating to their troubles with the home government, and which ended in the surrender to Queen Anne, April 15th, 1702, and of her acceptance of the same, April 17th, 1702, need not be referred to here.

The agreement made between William Penn and the other executors of John Fenwick, before copied at large, gave the surveys and sales of land made by and under the authority of the Patroon, preference as to title and boundary.

The care observed by Richard Tindall in fixing and describing the lines of these grants, shows him to have been a pains-taking and competent surveyor, whose field work to this day is so regarded by practical men.

The first survey made by William Penn under the agreement with the executors of John Fenwick, deceased, dated 13th of the 2d month, 1684, was for fifteen thousand five hundred and fifty-three acres, and bears date 2d month 24th, 1706, lying between Salem Creek and the river, including the Boughtown tract on the north, and extending along the river to Salem Creek, excepting all prior surveys. [See map.]

Liber A 100.  
Surveyor-General's office, Burlington, N. J.

The second survey made by William Penn under said agreement was for four thousand five hundred acres, and bears date 4th month 13th, 1706, and situate between Salem and Oldman's Creek, west of Thomas Piles' ten thousand acres. [See map.]

Liber A 81,  
Burlington.

The third survey made by William Penn under said agreement was for two thousand acres, and bears date 4th month 16th, 1706, and adjoined the last-named survey. [See map.]

Liber A 65,  
Burlington.

The fourth survey made by William Penn under said agreement was for two thousand acres, and bears date 4th month 16th, 1706. [See map.]

Liber A 100,  
Burlington.

The fifth survey made by William Penn under said agreement was for three thousand six hundred acres, and bears date 8th month 20th, 1706. [See map.]

Liber A 100,  
Burlington.

The most of these surveys contained large exceptions, being land before appropriated and conveyed by John Fenwick and



those located through grants made by James Nevill as attorney for William Penn, grantee of Edmund Warner. All of these surveys lie wholly within the limits of the twelve-miles circle, if extended east of the river.

Surveyor General's office, Burlington, N. J.

May 14th, 1738, John, Thomas, and Richard Penn made a re-survey of part of the above-named land, containing (after many exceptions) one thousand seven hundred and seventy-nine acres, with a front on Delaware River of nearly four miles.

Liber B 623 and 624, Trenton.

October 1st, 1697, Philip Ford conveyed to William Penn one whole share of the *ninety* parts of West New Jersey, and November 3d, in the same year, Daniel Waite also conveyed to him a like quantity of said *ninety* parts, and under which William Penn and his sons, after his death, made various surveys, but none of which lay within the Salem tenth.

As before mentioned, William Penn became the owner of Edmund Warner's share of thirty-two thousand acres in Fenwick's ten lots, which same were unlocated. James Nevill, as the attorney for William Penn, proceeded to sell and survey said unlocated acres to various persons, the first of which surveys was returned to Michael Lacrocy for three hundred acres, and bears date October 27th, 1684.

Liber A, or Nevill's Book, p. 7, Trenton.

Several of these locations were made to the Swedes and Finns, who were grantees under John Fenwick, and lay near the land named in said deeds, fronting on the Delaware River, and within the bounds of the agreement of the 13th of 2d month, 1684.

Richard Tindall, Surveyor General under the will of John Fenwick, fixed the boundaries and returned a map showing the situation, &c. This was a proper precaution on the part of William Penn—avoiding trouble with the adjoining owners, and having the sanction of the representative of the Fenwick interest.

A copy of one of these deeds is here given in full.



1012  
Tributary of Amazon

1013  
Tributary of Amazon

1014  
Tributary of Amazon



# MAP

Showing a continuation of the twelve miles circle (with New Castle as the centre) East of the Delaware River, and many of the tracts of land sold by John Fenwick previous to 1682, and surveys made by William Penn after that date lying in Salem County, New Jersey.

Scale 11 miles to the inch.

Projected by Thomas Shourds.  
1873.

- Various surveys made in the River Delaware (within the twelve miles circle) under authority of the Council of Proprietors of West New Jersey
- No. 1. 140 acres to Baine & Hopman, A. D. 1749.
  - No. 2. 367 1/4 acres to John Killie, A. D. 1789 (res. No. 1)
  - No. 3. 830-100 acres to 1 C. Corbit, A. D. 1818
  - No. 4. 13 acres to Edward Corbit, A. D. 1818
  - No. 5. 1 acre to Edward Corbit, A. D. 1818
  - No. 6. 42 85-100 acres to Christopher Moose, A. D. 1819.
  - No. 7. 27 70-100 acres to Thomas B. Woolman, A. D. 1821
  - No. 8. 7 100 acres to Joseph Howell, A. D. 1821
  - No. 9. 45 acres to Joseph Howell, A. D. 1821.

Scale.



[illegible]

**Proprietor & Manager**

157-1

[illegible]



## MICHAEL LACROY 300 ACRES OF LAND.

To all people to whome this present writing shall come.

Wm Penn propriet<sup>r</sup> and Gover of the Province of Pennsil-  
vania and the Territories thereunto annexed, and propriet<sup>r</sup> of  
Salem Tenth, in the province of New West Jersey Sendeth  
Greeting

Recorded in  
Book A of Ne-  
vill's Surveys,  
&c., p. 7, &c.

Whereas Edmond Warner late of the Province of Pennsil-  
vania afores<sup>d</sup> March<sup>t</sup> being invested in 32000 acres of land  
purchased by him and others of John Fenwick late of Fen-  
wicks Colony Esq &c. as by severall deeds being upon record  
relacon being thereunto had may more at large appear.

And Whereas he the s<sup>d</sup> Edmond Warner did for a valluable  
consideracon in hand payd by him the s<sup>d</sup> Wm Penn grant bar-  
gaine and sell all his right title interest pptie, claime and de-  
mand w<sup>h</sup>soever of in or to the s<sup>d</sup> 32000 acres of land unto him  
the s<sup>d</sup> Wm Penn his heires and assignes forever.

Now Know Yee that he the s<sup>d</sup> Wm Penn for and in consid-  
eracon of the sum of fiveteen pounds March<sup>th</sup> pay at Country  
prize to him the s<sup>d</sup> Wm Penn in hand payd by Michael Laeroy  
of Salem Tenth in the province afores<sup>d</sup> planter at or before the  
ensealing and delivery hereof the receipt hereof the s<sup>d</sup> Wm  
Penn doth hereby acknowledge himselfe therew<sup>th</sup> fully satisfied  
contented and payd thereof and every p<sup>to</sup> and p<sup>cell</sup> thereof he  
doth hereby acquitt exonerate and forever discharge him the  
s<sup>d</sup> Michael Laeroy his heires and assignes forever by these pres-  
ents As alsoe for divers other good causes and considerations he  
the s<sup>d</sup> Wm Penn hereunto espetially moveing he the s<sup>d</sup> Wm  
Penn have granted bargained sold aliened enfeofed and con-  
firmed And by these presents doth grant bargain sell allien  
enfeof and confirme unto him the s<sup>d</sup> Michael Laeroy his heires  
and Assignes forever Three hundred acres of land Marish  
Swamps and cripples cittuate lyeing and being on the east side  
of Delaware River in the s<sup>d</sup> Tenth and p<sup>v</sup>inee afores<sup>d</sup> being  
butted and bounded by the compasse as followeth (vizt) Begin-  
ning at a stake sett up at high water marke on the East side of  
Delaware River being the bounds betweene William Gill John-  
son and Michael Laeroy marked with the letters M W from



thence South West to a stake standing at high water marke mark<sup>d</sup> w<sup>th</sup> the letters J M being the bounds betweene John Laeroy and Michael Laeroy 120 pearches from thence South East into the woods thoroe the Marish 400 perches, To a Spanish oake tree mark<sup>t</sup> w<sup>th</sup> I M from thence North East for a head line 120 perches to a black tree mark<sup>t</sup> w<sup>th</sup> the letters M from thence to the first menconed stake 400 perches w<sup>thin</sup> w<sup>ch</sup> bounds and limitts is contained three hundred acres of land Marish swamps and cripples as by a certificate under the hand of Richard Tindall Surveyor General bearing date the 2d day of August 1684 All w<sup>ch</sup> said Tract of three hundred acres of land Marish swamps and cripples together w<sup>th</sup> the rivuletts quaries woods comodities advantages and other hereditaments w<sup>ht</sup>soever belonging or in anywise apptaining And also all the estate right title interest p<sup>ty</sup>tie claime and demand w<sup>ht</sup>soever of him the s<sup>d</sup> Wm Penn of in or to the s<sup>d</sup> Three hundred acres of land Marish swamps and cripples as afores<sup>d</sup> and all and singular other the premises herein before mentioned or intended to be granted bargained and sold, or any p<sup>te</sup> or p<sup>cell</sup> thereof And the revercon and revercons remainder and remainders thereof To have and To hold the s<sup>d</sup> three hundred acres of land Marish swamps and cripples w<sup>th</sup> the appurtenances and hereditaments and all other the p<sup>mes</sup>is herein and hereby granted bargained sold aliened enfeoffed and confirmed and every p<sup>te</sup> and p<sup>cell</sup> thereof unto him the s<sup>d</sup> Michael Laeroy and to the heires and assignes of him the s<sup>d</sup> Michael Laeroy for ever To the onley use and behoofe of him the s<sup>d</sup> Michael Laeroy And to the heires and assignes of him the s<sup>d</sup> Michael Laeroy forever and to noe other use intent or purpose w<sup>ht</sup>soever Yielding and payeing therefore yearley and every year the yearly rente of Three bushels of winter wheat on every 29th day of September unto the s<sup>d</sup> Wm Penn his heires and assignes forever And the s<sup>d</sup> Wm Penn for himselfe his heires executors and administrators Doth covenant and grant to and w<sup>th</sup> him the s<sup>d</sup> Michael Laeroy his heires and assignes that he the s<sup>d</sup> Michael Laeroy his heires and assignes shall and may hold and enjoy the s<sup>d</sup> Three hundred acres of land Marish swamps cripples and p<sup>mes</sup>is And receive and take the rents issues and p<sup>fitts</sup> thereof from time to time with<sup>out</sup> the lett evicion or disturbance of him the s<sup>d</sup> Wm Penn and the s<sup>d</sup> Edmond Warner their heires and assignes or any or

either of them or of any other p'son or p'sons claiming or to claime by from or under him, them or any or either of them for or in respect of any right title or interest w<sup>ch</sup> they or any or either of them shall or may have or claime unto the s<sup>d</sup> Three hundred acres of land Marish swamps cripples and p'mesis soe granted as aforesaid or any pte or p'cell thereof And not otherwise, freed and discharged or otherwise sufficiently saved harmless of and from all incumbrances done or suffered by him them or any or either of them in the meane time.

In Witness Whereof the s<sup>d</sup> William Penn have hereunto sett his hand and scale this 27th day of October in the yeare by the English aect 1684 and in the 36th yeare of the Reign of Charles the second King over England &c.

Signed and sealed by

JAMES NEVILL Agent [L. S.]

Signed sealed and delivered in the psents of

WM HALL

MICHAEL BARRON

Recorded the 28th day of Oct 1684 in Liber A Nevills Book &c page 7 &c.

This inquiry shows the prominent position held by William Penn before and after the first settlements of West New Jersey. In the incipient steps of John Fenwick to carry out a favorite scheme, and one to which he bent all the energies of his impulsive nature, William Penn is found to interpose his influence and secure for the creditors of Edward Byllynge a means of obtaining a discharge of their demands against said Byllynge.

In the adjustment of this difficulty between John Fenwick on the one part, and the creditors of Edward Byllynge on the other part, it became necessary for him to have full knowledge of the title to the soil as well as the relations of the parties interested. Out of this came the deed, which not only separated the estates of the disputants, but gave the arbitrator, in a large degree, control of ninety parts of the whole property.

In making grants under this deed, and to which William Penn was always a party, his information relating thereto was enlarged and became more intimate. No man better understood the legal and political status of every person and thing touching the inception and progress of these undertakings than he.

He became the owner of John Fenwick's ten parts of the one hundred parts, excepting one hundred and fifty thousand acres, which estate was the unappropriated acres of the ten parts lying South of and adjoining Oldman's creek or Berkley river, and bounding on the Delaware river, which by the agreement of the 2d month 13th, 1684, was brought within the limits of Salem and Oldman's creek and within which limits, surveys and sales were by him made.

As grantee of Edmund Warner, for his right in the thirty-two thousand acres, his (Penn's) interest was increased in this particular locality, and, as before named, surveys and sales were made.

As Executor under the will of John Fenwick, deceased, William Penn participated in the settlement of an intricate and much involved estate, and in the sale and conveyance of land to discharge debts against the same, assuring, doubtless, to purchasers under such deed, completeness of title and quietude of possession.

Every of these transactions necessarily required the personal attention of William Penn, yet no mention is made, no protest entered, or claim set up by him, his agents, or any person claiming under him or his agent, to any of the soil in Salem county within a continuation of the twelve miles circle (making New Castle the centre) under the feoffment deed from the Duke of York (August, 1682), but on the contrary, every grant by him or his agent for land in that locality within the limits of the circle, recites and recognizes the titles above named, and bases his right of conveyance on the same.

The words "the river," or "river," or "this river," as used in the deeds and wills found in the early Salem records, have the same import and bear the same meaning as like words used among the Swedes and Dutch, previous to and about the same time, on the opposite side of the Delaware river.

An examination of the Salem records discloses sentences like the following :

Salem Deeds, No. 9, p. 3, Trenton. 1695. "John Smith, of Alloways Creek, alias Monmouth River,"

1696. "Joshua Burkstead, of Cesaria River."

Salem Deeds,  
No. 6, p. 55, Tren-  
ton.

1697. "Thomas Bennett, of the town of Fairfield, in y<sup>e</sup> pre-  
cincts of Cesaria River belonging to y<sup>e</sup> county of Salem."

Salem Deeds,  
No. 6, p. 87, Tren-  
ton.

1697. "Leonard Berryman, of y<sup>e</sup> precinct of Cesaria River." p. 59.

1700. "Josiah White, of Monmouth River, in Salem county,  
&c., and Christopher White, late of *said river*."

Salem Deeds,  
No. 7, p. 62, Tren-  
ton.

1702. "Hance Oulson, of Oldman's Creek, alias Berkley  
River, in Salem county." p. 168.

The will of Isabella Hancock is given here in full, showing  
how these words were used.

#### ISABELLA HANCOCK'S WILL.

Know all men by these presents y<sup>t</sup> I Isabella Hancock late  
wife of Wm Hancock of Alloways Creek Shoemaker in ye pro-  
vince of West New Jersey, being of good, sound and perfect  
mind and memory praised be ye Almighty God. Whereas it  
hath pleased the Lord to visit me with sickness and much weak-  
ness of body since the decease of my late husband w<sup>ch</sup> hath hith-  
erto hindered ye execution of his will by me, and not knowing  
how ye Lord may dispose of me and for ye p'vention of all mis-  
takes and contention after my decease do make ordaine nominate  
and appointe Edward Wade of Alloways Creek and Rich<sup>d</sup> Guy  
of Elsenburgh in my roome and stead whole and sole Exer<sup>s</sup> of  
ye s<sup>d</sup> Will and Testament and furthermore I doe declare this my  
last Will and Testament in man<sup>r</sup> and form following (viz.)

Recorded in  
Book of Salem  
Wills, p. 26, &c.

IMP<sup>s</sup>. I will y<sup>t</sup> all my just debts be paid well and truly satis-  
fied.

*Item.* I give and bequeath unto my sister Penticost Dixon and  
unto Hester Dixon her daughter both of old Brough neere Bur-  
rough-brigge in Yorkshire two paire of sheets and two morning  
coates, two white aprons and one green apron, two pair of pillow  
beires and six napkins one table cloath and two handkercheifes.

*Item.* I give and bequeath to friends of this quarter the just sum

of five pounds of merchantable pay of this river, to ye use of building a meeting house.

*Item.* I give and bequeath unto Gregory Bishop of ye p'ish of Leonard Moreditch London shoemaker ye sum of fifty shillings of like pay.

*Item.* I give and bequeath unto Richard Davis (my present servant) his time of service freely w<sup>th</sup> three pounds of Merchantable pay of this river, to pay his passage for England.

*Item.* I give and bequeath unto Edward Wade above named and to Prudence his wife my John Hancock, to be his for ye terme of 9 yeares.

*Item.* I give and bequeath unto ye s<sup>d</sup> John Hancock at ye end of 9 yeares five hundred acres of lands w<sup>ch</sup> shall y<sup>n</sup> become due to him and not before.

*Item.* I give and bequeath unto Richard Whittacker of ye towne of Salem in West New Jersey ye sum of three pounds of Merchantable pay of this river.

*Item.* I give and bequeath unto Prudence Wade, wife of Edward Wade of Alloways Creek one pair of sheets.

*Item.* All ye rest of my estate both reall and personall, of what nature kinde or quality soe<sup>r</sup>, I give devise and bequeath unto my loving friends Edward Wade and Rich<sup>d</sup> Guy above named, whom I make ordaine depute and appoint Exer<sup>s</sup> of this my last Will and Testam<sup>t</sup> and for their care, pains and trouble I give and bequeath unto each of my Exer<sup>ts</sup> five pounds of merchantable pay of this river and leave ye reversion or overpluss of my estate (if any be found) to their disposing where they shall see most necessity and I doe hereby revoke renounee and make utterly voide, all and every Will and Wills testament and testaments at any time heretofore by me made and declare and appointe this my onley last Will and testaments.

In Witness whereof I ye s<sup>d</sup> Isabella Hancock ye testator have hereunto set my hand and seale this first day of ye 7<sup>mo</sup> called 7<sup>be</sup> 1680.

ISABELLA HANCOCK.

Signed sealed declared published and delivered in ye presence of us.

SAMUEL NICHOLSON.

HESTER WHITE.

ANNE NICHOLLSON.

These words were used to describe the settlement, the Colony or place of residence of the person named, or the locality of the tract of land about to be granted, and not the stream, in any case. Their intention cannot be misunderstood, and have no peculiarity when so considered.

The comparison of the Salem records on the East side of the river with those of the Upland Court and the New Castle registry on the West side of the same stream in this particular (which territory before the coming of John Fenwick was under the same government) leaves but little doubt as to the proper construction of the words or sentences aforesaid, and the meaning intended to be conveyed by their use in that connexion.





## History of the Twelve Miles Circle.

## I.

In 1621, the States of Holland granted a charter to "The West India Company," and in the year 1623 the said company sent a ship with emigrants, under the command of Cornelius May, to America. They arrived in Delaware Bay, and sailed up the river to near where Gloucester City now stands, and erected a fort, which was called "*Fort Nassau*." These were the first Europeans who sailed up the river Delaware, and by right of discovery the Dutch claimed the territory on both sides of the stream, and purchased large tracts of the Indians on both sides of the river.

Ferris' Original  
Settlements on  
Delaware River,  
p. 19.

Ferris, p. 19.

July 2d, 1626, Gustavus Adolphus, King of Sweden, granted to William Usselinx, a merchant of Stockholm, power to organize a trading company, to settle a colony in America. This was abandoned.

Ferris, p. 28.

The patent was renewed by Christiana, Queen of Sweden, and in 1637, two ships sailed from Gottenberg, on the west coast of Sweden, and arrived in the Delaware river, at a place they called "Christiana," in the spring of 1638. These ships were the "Key of Calmar," and the "Griffin," under command of Peter Minit.

Ferris, p. 35.

May 6th, 1638, William Kieft, Governor of New Amsterdam, and residing at Manhattan (New York), and by direction of the Dutch authorities, issued a protest against the Swedes, under authority of Queen Christiana, making any settlements on the Delaware river.

Ferris, p. 47.

This protest was not regarded by Minit, but they proceeded to erect a fort, and purchased large tracts of land of the Indians.

Ferris, p. 48.

In 1640, several companies of emigrants left Sweden, and came to New Sweden, on the west bank of the Delaware river.

The authorities of Sweden appointed Jost de Bogart as Chief

Ferris, p. 53.

Director of the *Hollanders* who had settled in New Sweden, and in 1642, instructions were sent to Governor Printz in regard to the "Dutch families" about Fort Christiana.

Ferris, p. 58.

Peter Minuit, Governor of New Sweden, died in 1641, and Peter Hollendan succeeded him as Governor, &c. He remained about one year, and John Printz was appointed Governor of New Sweden, and arrived February 15th, 1643.

Ferris, p. 61.

His instructions were, generally, to preserve the manners and customs of Sweden, to encourage agriculture and manufactures, to cultivate friendly intercourse with the Dutch, but to *deny* their pretended right to any part of the land on the west side of the river, and to regard the Indians as the rightful owners of the land, &c.

Ferris, p. 63.

Printz built two forts, one at Tinicum, and one at Elfsborg.

In 1646, a Dutch ship arrived in the Delaware. It was ordered into the Schuylkill by the Dutch commandant at Fort Nassau (Hudde). Governor Printz ordered it to leave the Schuylkill. During this trouble, Hudde was ordered, by the Dutch authorities at New York, to purchase a tract of land of the Indians, where Philadelphia now stands. Printz objected to the purchase.

The Swedes destroyed the Dutch settlements on the west side of the Delaware and Schuylkill.

Governor Kieft was succeeded by Peter Stuyvesant, May 27th, 1647, at Manhattan.

July 19th, 1651, Governor Stuyvesant purchased of the Indians a large tract of land on the west side of the Delaware river, and built a fort at New Castle, which they called Fort Cassimer.

The Dutch increased their military force in the Delaware forts, and in view of pending hostilities, Printz returned to Sweden for direction and advice. Before his arrival there a man-of-war ship, "The Eagle," was dispatched, which brought John C. Rising as Counsellor to the Governor, and Peter Lindstrom, Military Engineer, &c.

Ferris, p. 81.

The ship proceeded up the river, and captured Fort Cassimer (New Castle) *as standing on Swedish ground*.

Ferris, p. 81.

John C. Rising was appointed Governor of New Sweden, &c.

August 30th, 1655, Governor Stuyvesant arrived in the river

with a squadron of ships and many soldiers, to conquer the Swedes, and captured Fort Trinity (New Castle).

In the correspondence between Governors Stuyvesant and Rising, each denied the claim of the other's Government to the territory, but Governor Rising eventually capitulated, and articles were signed September 25th, 1655, and the Swedish dominion of the Delaware river passed to the Dutch.

Ferris, p. 91.

Some deeds were given to the Swedes by the Dutch, to confirm their title, and also by Lord Lovelace (the English Governor), for the same purpose.

Ferris, p. 101.

In 1656, many settlers came to New Castle, and the Governor and Council executed seventy-five deeds for land thereabouts.

Ferris, p. 105.

November 29th, 1655, John Paul Jaquet was made Governor by the Dutch. The country on the west side of the river was divided into *two colonies*, one extending from Christiana creek to Bombay Hook, was called "The Colony of the Company;" the other, extending from the creek northward, up the river, was called "*The Colony of the City.*" *It belonged to the city of Amsterdam*, and by it governed through Peter Stuyvesant and Council. *Deeds* for the land were made by the Burgomasters and Council of Amsterdam.

Ferris, p. 106.

April 20th, 1657, Jaquet was removed, and Jacob Alrich appointed Governor over the *Colony of the City*; Goeran Van Dyke was made *Inspector of the Swedes*.

October 28th, 1658, William Beekman of Amsterdam, was chosen Vice-Governor of "The Colony of the Company," to reside at Altona (Wilmington).

In 1659, *there were one hundred and thirty families* of Swedes on the Delaware, being in majority of all others there.

Ferris, p. 108.

Governor Alrich died in 1659, and Alexander Hinoyosa succeeded him.

February 7th, 1663, "The Colony of the Company" was *united* with "The Colony of the City," making one colony of the territory extending from Bombay Hook up the river the extent of the settlements.

The war between the States of Holland and Great Britain gave all the territories in America to the Crown of England, and August 24th, 1664, Governor Stuyvesant capitulated with

Ferris, pp. 116,  
117, 118.

Colonel Nicolls and the Dutch dominion over the North and South (Delaware) Rivers, and the settlements thereon passed to the British King, Charles II.

By a commission dated September 3d, 1664, Sir Robert Carr proceeded to the Delaware to accept the allegiance of the people to the new powers, who accepted the same peaceably. To Lord Baltimore's son he was directed to say: "Your commands are to keep possession in his *Majesty's own behoof and right*," and if he pretends a right thereunto by his patent (which is a doubtful case) *you are to keep possession till his majesty is informed*," &c.

Colonel Nichols was made Governor of New Netherland under the Duke of York.

Ferris, p. 123.

In the war with the States of Holland on the one side, and England and France on the other, New Netherland was reconquered by the Dutch, in August, 1673.

Anthony Clove was appointed Governor of New York and its dependencies, and he made Peter Alrich deputy commandant of the Colonies on the west side of the Delaware river.

February 19th, 1674, this country was by treaty restored to the English.

Ferris, p. 125.

October, 1674, Edmond Andross was appointed Governor of New York, Pennsylvania, Delaware, and New Jersey, and he appointed Captain Cantwell and William Tamm to take charge of the fort at New Castle.

The attempt to enforce the payment of duties by all vessels passing up the Delaware river for ports in New Jersey, called forth a protest from the proprietors and trustees of that province (William Penn being one), who claimed that the right of government had been granted, &c., which caused said demand to be abandoned.

See Minutes of  
Upland Court.  
Memoirs of His-  
torical Society of  
Pennsylvania,  
Vol. VII.

The Swedes and Dutch having recognized the authority of the English Crown, those settled on *either* side of Delaware river established *two* courts, one at New Castle, and the other at Upland, under the government of Charles II., King, &c.

The records of the Upland Court commence November 14th, 1676, and end June 14th, 1681.

There being some difficulty as to the extent of the jurisdiction of the said courts, a division line or boundary, was agreed upon

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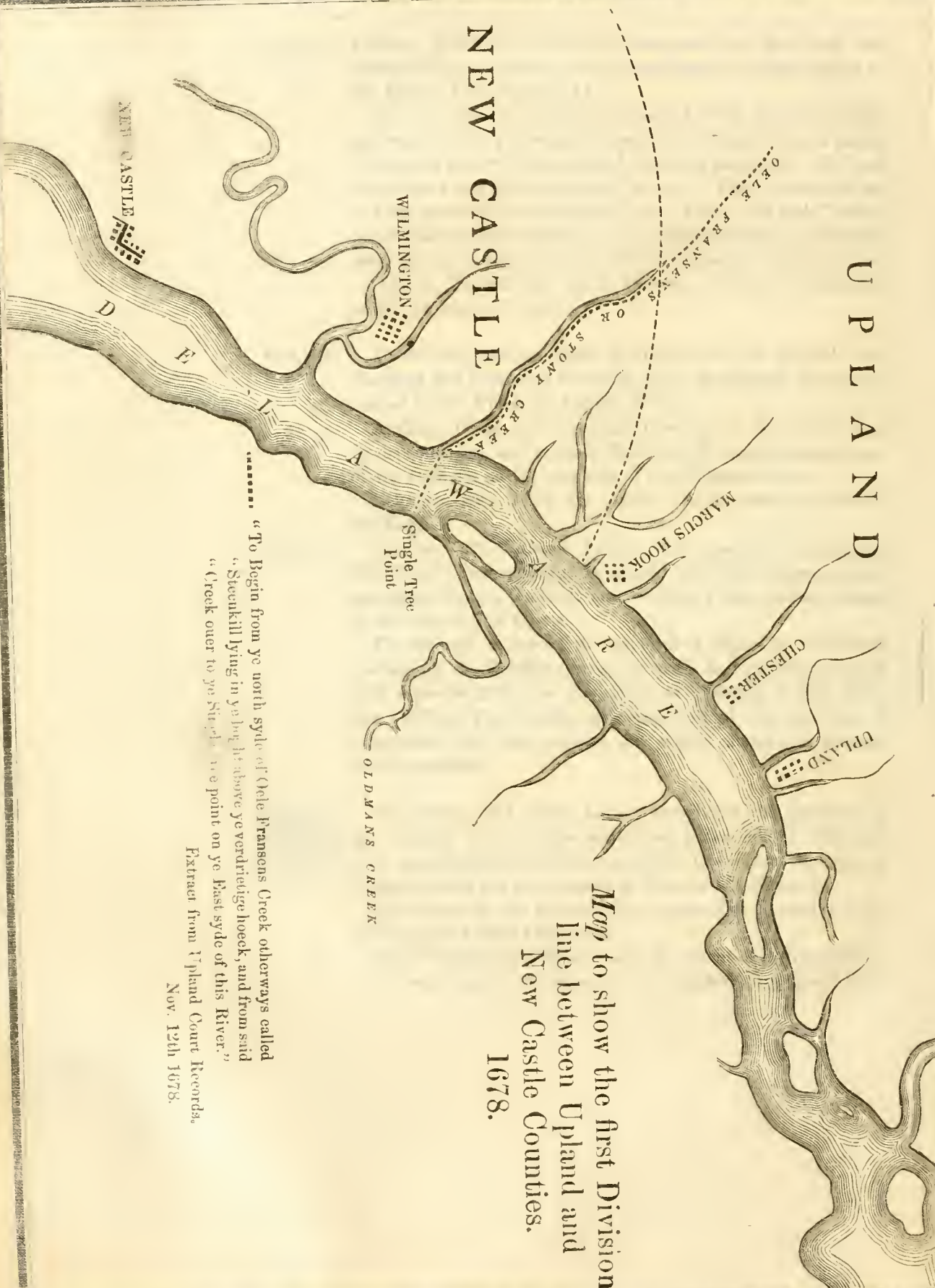
THE CASTLE

THE CASTLE



# UPLAND

*Map to show the first Division  
line between Upland and  
New Castle Counties.  
1678.*



..... "To Begin from ye north syde of Oele Franssens Creek otherways called  
"Steunkill lying in ye bay he above ye vertrieghe hoeck, and from said  
"Creek over to ye Single Tree point on ye East syde of this River."  
Extract from Upland Court Records.  
Nov. 12th 1678.

November 12th, 1678, which extended down Stony creek, now Quarryville creek, to the mouth, and thence *across* the river to Single Tree Point, on the New Jersey shore, about one mile below the mouth of Oldman's creek, in Salem county.

New Castle at that time was perhaps the largest town on the western shore of the river.

The accompanying map may explain said boundary.

In anticipation of the grant made by the King to William Penn, "for a tract of land in ye north part of America," several questions were submitted to the committee of "Trade and Plantations," also to the Attorney General and Lord Chief Justice North.

Protests were entered by the agent of Lord Baltimore, examined by the committee, the Attorney General, and Lord North.

An examination of the correspondence hereunto annexed will show that the only difficulty was the position of the *southern* boundary; twenty or thirty miles northward of New Castle town was the first suggestion, so as not to interfere with the plantation or Colony of New Castle—"ye whole being planted promiscuously by Swedes, Finlanders, Dutch, and English."

To this proposition William Penn objected, for the reason that "he shall have so little of ye river left as to very much prerent ye hopes he hath of improving ye rest within his patent."

He was willing to accept twelve English miles north of New Castle as his boundary, to which the Duke of York did not object, and finally settled upon by Lord Chief Justice North in these words: "*And on a circle drawn at twelve miles distance from New Castle northwards and westwards.*"

The claims made by the agents of Lord Baltimore were considered by Lord North, and no doubt held by him as in no way interfering with the twelve-miles circle, and which circle was fixed by him to meet the views of Penn, who already had the approbation and favor of the King and Duke of York to settle the territory.

A synopsis of the letters and minutes of council, &c., as taken from manuscript copies in possession of the Historical Society of Pennsylvania, immediately follow.

EXTRACTS OF LETTERS IN THE "PLANTATION OFFICE,"  
LONDON, ENGLAND.

COUNCIL CHAMBER 14th of June 1680.

*To Sir J. Warden*

SIR The R<sup>t</sup> Hon the Lords of the Committe for Trade and Plantations having rec<sup>d</sup> a Petition from William Penn, referred to them from his Majesty, concerning a Tract of Land in y<sup>e</sup> north part of America wh<sup>ch</sup> he would undertake to settle and render a profitable Plantation to y<sup>e</sup> Crown, but they must first consult you \* \* \* in regard to his Majestys Propriety \* \* \* in those parts \* \* \* you will send a Copy of Petition &c. \* \* \* and they to report whether such a Plantation would intrench on y<sup>e</sup> Patent of his Royal Highness &c. \* \* \* \*

ST. JAMES 23d of June 1680.

*For Wm Blaythwaite See to Lords of Trade &c.*

SIR I had answered your letter of the 14th sooner but that of my going to Windsor \* \* \* and also made me think it proper to acquaint the Duke with its contents first \* \* \* What I have to say now is, That by all that I can observe of y<sup>e</sup> Boundaries mentioned in Mr Penns Petition they agree well enough with y<sup>t</sup> Colony or Plantation which hath been hitherto, ever since the conquest of New York by Col Nichols held as an appendix and part of y<sup>e</sup> Government of New York by y<sup>e</sup> name of Delaware Colony or more particularly New Castle Colony that being y<sup>e</sup> name of y<sup>e</sup> principle place in it. Y<sup>e</sup> whole being planted promiscuously by Swedes, Finlanders, Dutch and English) all which hath been actually under y<sup>e</sup> government of his Royal Highness Lieutenant at New Nork hitherto. But y<sup>t</sup> as its proper Boundaries (those of Latitude and Longitude being so very little known, or so ill observed as experience tells us in all y<sup>e</sup> West Indies.) I am not able to say if this be what Mr Penn would have.

I presume y<sup>e</sup> Lords of Trade \* \* \* will not encourage his pretentions to it because of y<sup>e</sup> above mentioned, \* \* \* which shows plainly y<sup>e</sup> Dukes right preferable

to all others under his Majestys good liking \* \* \*  
 though it should not prove to be strictly within y<sup>e</sup> limits of y<sup>e</sup>  
 Dukes Patent \* \* \* but if it be any other parcel  
 of land unimproved in those parts which is without all other  
 Patents and not interfering w<sup>t</sup> the possessions of his Majestys  
 subjects already settled there \* \* \* I humbly  
 submit \* \* \* how far y<sup>e</sup> are willing to Recom-  
 mend y<sup>e</sup> Petition. \* \* \*

JUNE 23d 1680.

*From Lord Baltimores Agents &c.*

In answer to yours in reference to Mr Penns Petition &c  
 \* \* \* something must be reserved to Lord Bal-  
 timore \* \* \* If y<sup>e</sup> grant pass to Mr Penn for  
 land in America \* \* \* y<sup>e</sup> same shall lay North  
 of Susquehanna Fort \* \* \* and on a direct line from  
 s<sup>d</sup> Fort to y<sup>e</sup> Delaware River \* \* \* for y<sup>e</sup> Fort  
 is y<sup>e</sup> Bounds of Maryland Northward. \* \* \* It  
 may contain general words of restriction \* \* \*  
 as to Baltimores interest. \* \* \* We wish to see  
 the Grant before it pass. \* \* \*

Yours &c.

BARNABY DUNCH.  
 RICH<sup>d</sup> BURK.

WHITEHALL 16th Oct 1680.

*To Wm Blaythwaite Sec of Lords of Trade &c.*

SIR \* \* \* since then Mr Penn hath  
 represented to y<sup>e</sup> Duke his case and circumstances (In relation  
 to he hath reason to expect favor of his Majesty touching that  
 request.) \* \* \* His Majesty orders me to let you  
 know that he is very willing Mr Penns request may meet with  
 success \* \* \* that he may have a grant of y<sup>e</sup> tract  
 of land w<sup>h</sup> lies on y<sup>e</sup> north of New Castle Colony (part of Dela-  
 ware) on y<sup>e</sup> West side of Delaware River, beginning about y<sup>e</sup> lati-  
 tude of 40 degrees and extending. \* \* \*

J<sup>o</sup> WERDEN.

COUNCIL CHAMBER 8 Nov 1680.

*To Mr Attorney General.*

SIR His Majesty having referred the Pet<sup>n</sup> of Mr Penn to y<sup>e</sup>

Lords of Trade &c. \* \* \* to Grant him a tract  
 of Land in America \* \* \* and having rec from  
 him y<sup>e</sup> inclosed Draught of y<sup>e</sup> Grant which he desires \*  
 \* \* you will report if you have any thing to object  
 by next Thursday afternoon. \* \* \* \*

Nov 18th 1680.

*To Mr Werden*

SIR I formerly sent you y<sup>e</sup> Petition of Mr Penn touching a  
 tract of Land adjoining to New York and Rec<sup>d</sup> your answer  
 which I presented to y<sup>e</sup> Lords of Trade \* \* \*  
 and now send by their order so much of y<sup>e</sup> Patent (by extract)  
 which he is soliciting \* \* \* as concerns the bound-  
 aries, so you may make your objections in behalf of his Majesty.  
 \* \* \* \*

COUNCIL CHAMBER 18 Nov 1680.

*To the Agent of Lord Baltimore*

On y<sup>e</sup> 14 of June last, I sent you y<sup>e</sup> Petition of Mr Penn, who  
 prays a Charter \* \* \* for making a settlement  
 north of Maryland and rec<sup>d</sup> your answer on y<sup>e</sup> 23d following and  
 laid y<sup>e</sup> same before y<sup>e</sup> Lords of Trade \* \* \* and  
 if you have any objections, you must make them \* \* \*  
 as on Tuesday P M they will make up their Resolution. \*  
 \* \* \* \*

ST JAMES 20th Nov 1680.

*From Jno Werden to Wm Braythwaite Sec of Lords of Trade* \*

I rec your letter of the 18th inst of some part of Mr Penns  
 patent for Land in America.

It is first proper to have the advice of persons learned in the  
 law for settling y<sup>e</sup> boundaries of any new Patent, which may be  
 liable to encroach on others possessions. \* \* \*

I believe y<sup>e</sup> description by Longitude and Latitude very un-  
 certain. \* \* \* But it being y<sup>e</sup> Dukes intention  
 that Mr Penns grant be bounded on y<sup>e</sup> East by Delaware River  
 \* \* \* and his Southerly boundary be 20 or 30  
 miles beyond New Castle (which Colony of New Castle is north-  
 ward and distinct from Maryland.) \* \* \* Which  
 extent northward from New Castle we guess will be in the 40th  
 degree of Latitude.

Therefore if Mr Penns patent be so worded as to leave New



Castle 20 or 30 miles beyond it free and to be bounded on y<sup>e</sup> East by y<sup>e</sup> Delaware river, I think this is all y<sup>e</sup> caution it needs. As y<sup>e</sup> Duke will not concern himself how far North and West y<sup>e</sup> Grant to Mr Penn is. \* \* \* \*

J<sup>o</sup> WERDEN.

ST JAMES 23 Nov 1680.

*To Wm Blaythwaite Sec of Lords of Trade*

Mr Penn having fallen into discourse with me about his Grant in America, he seems to fear if his southern limits be rightly set at 20 or 30 miles North from New Castle town, he shall have so little of y<sup>e</sup> river left as to very much to prevent y<sup>e</sup> hopes he hath of improving y<sup>e</sup> rest within his Patent \* \* \* but on y<sup>e</sup> other side he is willing y<sup>t</sup> 12 English miles North of New Castle be his boundary and believes that distance will fall under y<sup>e</sup> 40th degree of Latitude \* \* \* Ye Dukes mind is to keep some convenient distance from New Castle northward for a Boundary of that Colony \* \* \* but cannot see why we should be so particular in a country where we know so little \* \* \* when all y<sup>e</sup> benefits are intended for this Patentee.

J<sup>o</sup> WERDEN.

DEC 16th 1680.

*Summons to Lord Baltimores Agents*

The Lords of Trade have appointed to hear y<sup>e</sup> Exceptions of Lord Baltimore to Mr Penns Patent on Saturday y<sup>e</sup> 18th at 4 P M. You are not to fail as they will proceed to a resolution &c.

J<sup>o</sup> WERDEN.

As y<sup>e</sup> same is bounded on y<sup>e</sup> East by Delaware river from 12 miles distance northward of New Castle Town, \* \*

\* beginning of y<sup>e</sup> 40th degree of Northern Latitude  
\* \* to extend Westward five degrees. \* \*

And on a Circle drawn at 12 miles distance from New Castle Northwards and Westward \* \* \* and by a right line Westward \* \* \* Excepting all lands within 12 miles of y<sup>e</sup> Town of New Castle that shall happen to lie within said bounds. \* \* \*

Wm Penns boundaries settled by me L. C. J. North.



May it please your Lordships I have considered the Petition of Wm Penn for his grant in America \* \* \* and y<sup>e</sup> Patent granted to his Royal Highness of New York being bounded Westward by y<sup>e</sup> East side of Delaware Bay, is sufficiently distinguished from Mr Penns grant, which is bounded Eastwardly by Delaware bay and River \* \* \* But I am further to offer \* \* \* that there are several Dutch and Swedish plantations which have been long under the English Government that lie scattered on y<sup>e</sup> Western shore of Delaware river and some perhaps within y<sup>e</sup> bounds of Mr Penns Petition, and have acknowledged y<sup>e</sup> authority of his royal highness or of Lord Baltimore.

*From ye Plantation Office* \* \* \* \*

May it please your Majesty &c. \* \* \*

In obedience to your Majestys order we have prepared the Draught of a Charter \* \* \* to William Penn \* \* \* for a Tract of Land in America. \* \*

February 24th 1680-1.

The papers, Letters, Reports &c between Mr Penn, the Board of Trade, Lord Baltimore and J<sup>o</sup> Werden, previous to the Grant of Pennsylvania, Also the Settlement of ye Pennsylvania bounds by Lord Chief Justice North, are bound in a Book at ye Board of Trade, entitled "Pennsylvania, New Jersey and Carolina papers Volume I" from whence they were copied this June 26th 1735.

#### COUNCIL CHAMBER AT WHITEHALL April 17th 1683.

Two letters rec<sup>d</sup> from Lord Baltimore dated 8th of February 1682, with an account of a Conference with William Penn \* \* \* about the boundary of their Provinces \*

\* \* \* Penn had ordered some persons not to pay any more tax to Lord Baltimore \* \* \* they being in Pennsylvania \* \* \* to which he protested \* \* \* and Issued orders to Sheriffs &c \* \* \*

Whereupon ye Lord Keepers &c \* \* \* are to hold the said dispute under advisement &c \* \* \* That letters be sent to Penn and Baltimore to try and settle the difficulty &c \* \* \*

MAY 30th 1682.

Richard Burk, servant of Lord Baltimore on Petition asks that the Grant that is passing *to his Royal Highness* of ye parts adjacent to Delaware Bay, may *not* pass ye Great Seal untill his Majesty be satisfied of the Extent of the Land granted to Lord Baltimore \* \* \* ye said Burk saying the said lands lie within the Patent of Lord Baltimore.

Mr Penn's agent claims the said land never was in Baltimore's patent, but settled by Dutch and Swedes, and that the Grant of land to Baltimore was not for lands inhabited by Christians—so ye surrender of ye country having been made to his Majesty in 1664, Baltimore can have no right unto the same it having ever since been *in possession of his Royal Highness* \* \* \* Baltimore can receive no injury by ye Grant that is desired \* \* \* Mr Penns agent undertaking to prove that the Dutch and Swedes had possessed this country in 1609, or at least before the date of Baltimore's patent.

FEBRUARY 12th, 1683-4

A letter was read from Lord Baltimore stating he would return to England in April next, and the further hearing of the dispute was postponed untill his arrival.

JULY 23d 1684.

Lord Baltimore attending with Mr Ford agent of Mr Penn, Mr Ford stated that Sir Edward Herbert, Solicitor to his Majesty being absent he could not proceed.

SEPT 30th 1684.

Sir Edward Herbert stated that he could not proceed without Mr Penn being present, who was soon expected in England.

AUG 18th 1685.

On petition of Mr Penn, that ye *difference* between Lord Baltimore and himself is about a title of land and *not of power* \* \* \*

SEPT 2d 1685.

Lord Baltimore and Wm Penn appearing, Mr Penn proceeded to prove that ye country of Delaware was inhabited by

ye Swedes and Dutch before ye date of Baltimore's patent, Penn to give Baltimore copies of his documents.

OCT 8th 1685.

Baltimore and Penn attended, Baltimore gave an account of one Ployden sailing up ye river in 1642 and did not see any houses there at that time. A copy of a report of the Commissioners of Foreign Affairs, Apl 4th 1638 about the Isle of Kent between Lord Baltimore and Mr Clayborne and about ye settling Delaware Bay and River, to ye southard of the 40th degree by ye Dutch and Swedes. \* \* \*

OCT 17th 1685.

Their Lordships agreed to Report that the Tract of Land now in dispute does not belong to Lord Baltimore, and as the boundaries are in dispute, also adjudge that the same belong to *His Majesty*.

OCT 31st 1685.

Their Lordships taking into consideration what might be the *true boundaries of ye country of Delaware*, between Penn and Baltimore, it is proposed that ye whole Peninsula called Delaware be divided into *Two equal parts between his Majesty and Lord Baltimore*.

NOV 7th 1685.

Their Lordships agree that the Peninsula be divided by a line running North and South through the Peninsula, and that half towards ye Delaware Bay and ye Eastern Sea belong to his Majesty and the other to remain Lord Baltimore's.

COUNCIL CHAMBER June 14th 1680.

The petition of Wm Penn praying in consideration of debts due his father that a Grant of land be made him of a Tract of Land in America \* \* \* to be bounded on ye East by Delaware River &c \* \* \* Mr Penn being asked what extent of land will satisfy his debt, says three degrees northward &c \* \* \* A copy of the Petition sent to Sir J<sup>o</sup> Werden \* \* \*

JUNE 25th 1680.

Mr Penn agrees that Susquehanna fort shall be the Bounds of Baltimore's Patent \* \* \*

DEC 16th 1680

Mr Penn, Lord Baltimore's Agent and Sir John Werden  
requested to attend next meeting \* \* \*

JANUARY 15th 1680-1

The boundaries of Mr Penn's Patent settled by my Lord  
Chief Justice North, and the whole to be read at the next  
meeting.

JANUARY 22d 1680-1

Upon reading the Draught of Penn's patent, The Lords of  
Trade &c request the Chief Justice to correct the same so that  
War or Peace may be declared by the King, that all acts of  
Parliament relating to Customs be duly observed &c \* \* \*  
The Bishop of London also requested that Penn be required to  
admit a Chaplain upon request of any number of Planters &c  
\* \* \* \*

## II.

March 4th, 1681, Charles II., King of England, &c., by let-  
ters patent, granted unto William Penn a certain tract of land  
in America, called "Pennsylvania, as ye same is bounded on ye  
east by Delaware River, from *twelve miles distance northwards*  
from New Castle town," &c., "and on ye south by a *circle drawn*  
at twelve miles distance from New Castle *northwards and west-*  
*wards* unto ye beginning of ye fortieth degree of northern lati-  
tude," &c.

"In but this single instance has a circle been employed to  
indicate a dividing line of contiguous States, and the inquiry at  
once suggests itself why such a line was established."

Latrobe's Ad-  
dress, 1854.

In 1655 the territory on the west side of Delaware River, as  
settled by the Dutch and Swedes, was divided into *two* parts,  
making Christiana Creek the boundary line. That from said  
stream *northwardly* belonged to the city of Amsterdam, and was  
called the "*Colony of the City*."

Ferris's History  
of Delaware Riv-  
er, p. 106.

Grants of land were made to settlers by the Burgomasters and  
Council of Amsterdam within said *Colony of the city*, and it is  
possible the southern boundary of Penn's patent may have had  
regard to the northern line of the *Colony of the city*, and the claims  
of settlers within the limits thereof.

Holmes' map of Pennsylvania, begun in 1681, and continued under the supervision of William Penn (a part of which is here annexed,) shows how the proprietor made sales of his land along the southern boundary, and was careful to avoid difficulty with older claims.

August 24th, 1682, James, Duke of York, granted to William Penn "All that the town of New Castle, &c., and all that tract of land lying within the compass or circle of *twelve* miles about the same, lying on the Delaware River," &c.

This line was doubtless intended to be the same as that of the patent from the King to Penn (March 4th, 1681.)

The authorities of the counties of New Castle and Chester had some difficulty in fixing the limit of jurisdiction of each bailiwick, and by order of William Penn certain persons were appointed (the 8th month 28th, 1701,) to run and settle the same.

Although William Penn claimed at that time to be the owner of the soil on both sides of that part of the circle, yet the commissioners were directed by his commission, hereunto annexed, to settle the same according to the *King's letters patent* and the *deed of feoffment from the Duke*, keeping in view, doubtless, the territorial jurisdiction of the courts of New Castle and Chester, which had been recognized in the patent of the King to Penn in 1681, and identical with the grants of land made by the Burgomasters and Council of Amsterdam within the bounds of "*the Colony of the City.*"

This avoided any trouble that would occur if the limit of jurisdiction was changed in said counties, and leave the settlers within the bailiwick where their deeds had been recorded.

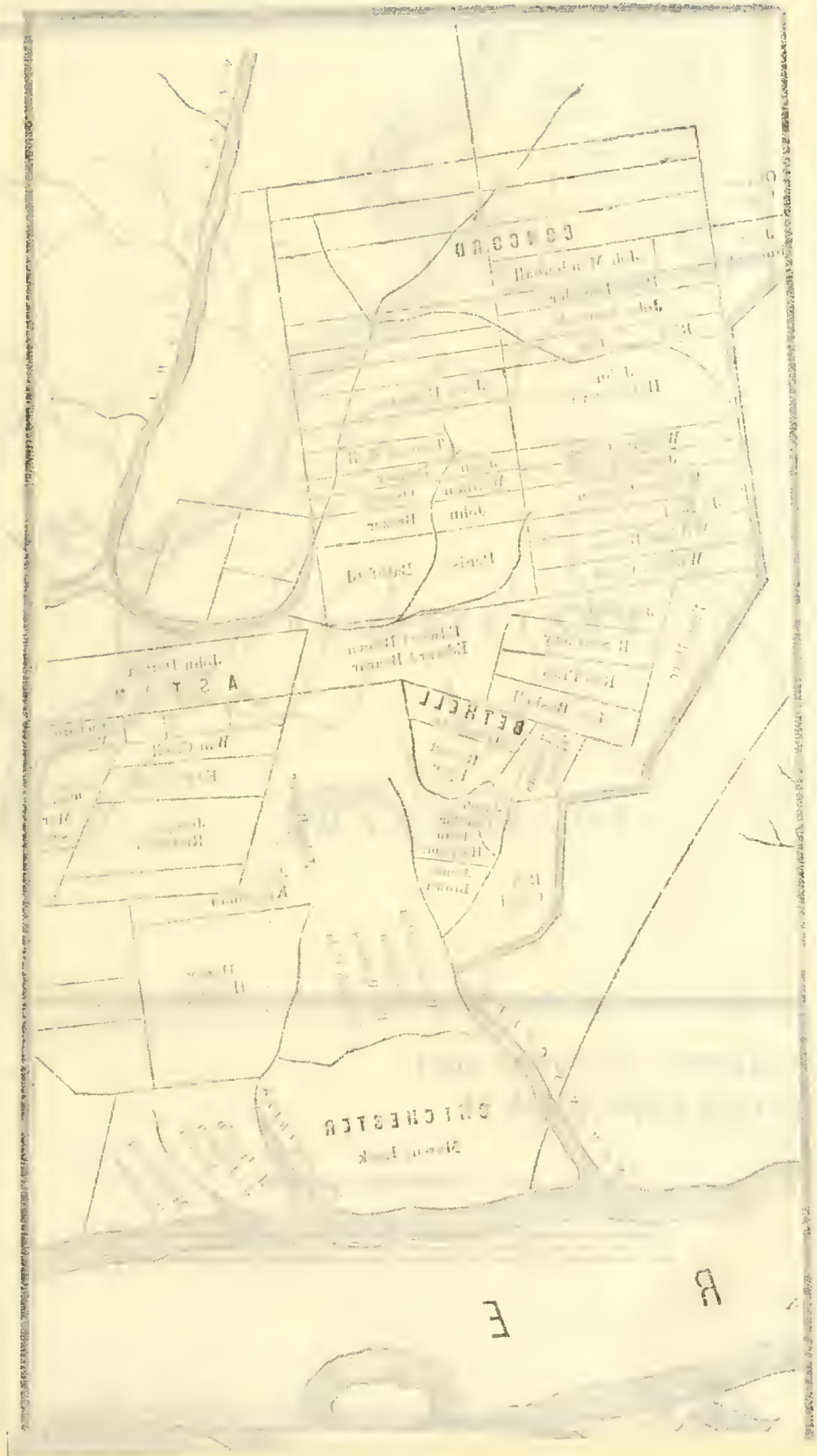
These or perhaps better reasons must have influenced the proprietor in perpetuating the boundary, which even then, and for many years after, led to so much litigation and expense.

The commissioners proceeded with much care in running the radius of twelve miles from the end of the "Horse Dyke" at New Castle, and in fixing the *circle* according to their instructions.

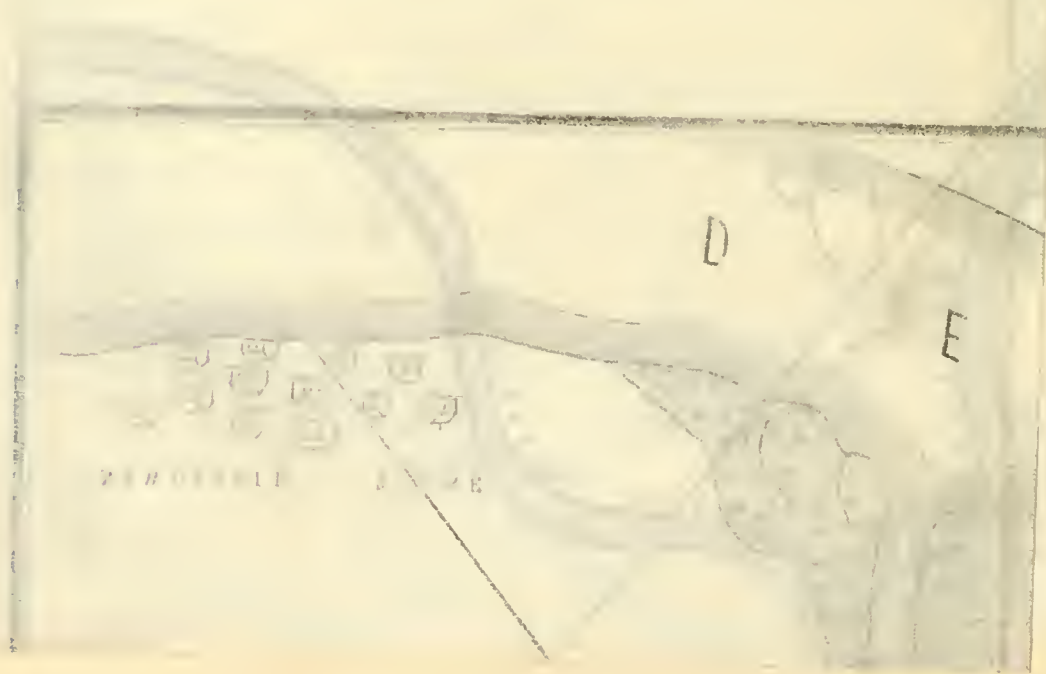
From the end of the twelve miles distance they ran "eastward *circularly*, \* \* \* and at the end of forty-three chords, came to ye Delaware River," &c.

They returned a map of their work, dated 10th month 4th,









ZEROSELL D E

1701, a copy of which is hereunto annexed, showing the field work as by them performed.

A comparison of Holmes' map of 1681 with the running of the circle by the commissioners in 1701, shows that the boundary on the south of the King's patent to Penn could *not* have been a random line, but was fixed with regard to the claims of settlers that had originated under the Dutch or Swedes, in the *Colony of the city* about New Castle.

#### FIRST RUNNING OF THE CIRCLE, 1701.

“By virtue of a warrant from William Penn Proprietary and Governor of the Province of Pennsylvania and Counties annexed Bearing date the 28th day of ye 8th month 1701, Authorising us to accompany the magistrates of ye county of New Castle and County of Chester or any three of them within the space of forty days after ye said date to admeasure and survey from the town of New Castle the distance of twelve miles on a right line up ye said River and from ye said distance to divide between the two s<sup>d</sup> Counties by a Circular line extending according to ye Kings letters patents and deeds of feoffment from the Duke and ye said Circular line to be well marked two thirds part of ye semicircle.

These are to Certify that on ye twenty fifth day of ye ninth month 1701 we met at New Castle with Cornelius Empson Richard Hallowell and John Richardson Justices of ye County of New Castle and Caleb Pusey Philip Roman and Robert Pile Justices of ye County of Chester who did unanimously conclude that the *Beginning* should be at the end of the Horse Dyke next ye said Town of New Castle and from thence to measure Due North the distance of twelve miles and at the extent thereof to run the said circular line first Eastward down to the River and then to return to ye said extent of twelve miles North and to run the said circle Westward untill it should complete the two thirds part of ye said semicircle, and accordingly the twenty sixth day of ye said month we did begin in ye presence of ye said Justices at ye said end of ye Horse Dyke and measured Due North twelve miles to a White oak marked with twelve notches standing on







ye West side of Brandywine Creek in the land of Israel Helm and from the said White oak we ran Eastward circularly, changing our course from ye East Southward one degree at ye end of every sixty seven perches which is the chord of one degree to a twelve mile radius, and at ye end of forty three chords we came to ye Delaware river on ye upper side of Nathaniel Lampleys old house at Chichester and then we returned to the White oak in Israel Helms land and from thence we ran Westward, changing our course one degree from the West Southward at ye end of every sixty seven perches as before untill we had extended seventy seven chords (which being added to ye forty three chords make two thirds parts of ye semicircle to a twelve mile Radius) all which said circular line being well marked with three notches on each side the Trees to a marked Hickory standing near ye Western branch of Christiana Creek. Surveyed the 4 day of the 10th month 1701. By us.

ISAAC TAYLOR.  
& THO. PIERSON."

"These may Certify that Isaac Taylor and Thomas Pierson did accompany us at ye Town of New Castle ye 25th day of ye 9th month 1701, together with Richard Hollowell being all Justices of ye peace where we did unanimously agree and conclude that in order to admeasure and survey the twelve miles distance from New Castle towne for the dividing the County of New Castle from the County of Chester according to ye Proprietary Warrant the Beginning should be at ye end of ye Horse Dyke next the said Towne and then to run Due North twelve miles from ye extent thereof to divide the said Counties by a Circular line as is above certified and that at ye end of the ye said Horse Dyke ye said Isaac Taylor and Thomas Pierson did begin to measure the said twelve miles in ye presence of us all together with Richard Hollowell and from that time we were sometime five but never less than four all ye Running ye said North line and also ye two thirds of ye semi circle till it was completed according to ye above certificate and ye whole was finished ye 4th day of this instant. To this certificate we do subscribe our names ye 13th of ye 10th mo 1701.

CORNELIUS EMPSON.  
JOHN RICHARDSON.

CALEB PUSEY.  
PHILIP ROMAN.  
ROBERT PYLE."



DEPT. OF THE INTERIOR

E





Hickery

Indian Town

Indian Town

White Oak

Beaver Creek

Brandy Wine Creek

Red Clay Creek

White Clay Creek

Christiana Creek

Bread & Cheese Island

Christiana Creek

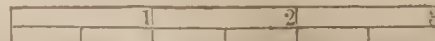
King's Creek

Chichester

DELAWARE RIVER

- A. New Castle.
- B. The Old House of Nath Lamply's at C. ichester.
- C. The Swamp behind Nath Lamply's.
- D. Jasper Yeats's Mill.
- E. Charles Rawson's House in Chichester.

A  
Scale of  
Three Miles.





## III.

Thus far in the history of the twelve miles circle it will be seen that the adjustment of it was by direction of the person who claimed the unappropriated land on either side of the same, and who preserved it for local reasons.

Although John Fenwick had conveyed to William Penn (March 23d, 1682,) all his right and estate in the moiety of New Jersey many years before the first running of the circle, yet nothing appears in Penn's instructions to the Commissioners (1701), in the report of said Commissioners, or in any subsequent history of the controversy between Penns and Baltimore (1732-1760), to prove that the circle mentioned in the Duke's deed of feoffment passed beyond the edge of the Delaware river on the western side.

Liber E F, p.  
135, Trenton.

Extracts from the minutes of the Upland Court, extending from 1676 to 1681 (and to the time of the execution of the deed from the Duke of York to William Penn) are here attached.

The words, "*in Delaware river*," as frequently written in said minutes, cannot be construed to mean any other than the territory, the colony, the *plantations* or *settlements*, and *not* the stream.

## THE WORDS "IN DELAWARE RIVER"—1676.

The first Entry in the Records of the Upland Court (page 35, Penns. His. Soc. Publications) is in these words: "At a Court held at Uppland *in Delowar River* by the anthourity of our Sovereign Lord Charles the Second, by the Grace of God" &c.

Page 37, "By Virtue of Authority &c I do &c appoint Peter Cock, Peter Rambo &c to be Justices of the Peace in the Jurisdiction of *Delowar river* and dependencies" &c.

Page 38, "By Virtue &c I do appoint Ephraim Herman to be Clerk of the Court *at Upland in the River*" &c.

Page 39, "That the books of Laws &c used in New York &c be likewise in force and practice *in this River*" &c.

Page 40, "That there be three Courts held in the several parts of *the River and Bay* as formerly" &c.

Page 41, "That there be a High Sheriff for the Towne of New Castle, *River and Bay*" &c.

Page 45, "Since it hath pleased &c to Commissionate &c us Justices at Upland *in Delaware River* &c we do" &c.

Page 46, "At a Court held at *Upland in Delaware River*" &c March 13th, 1676.

Page 50, "At a Court held at *Upland in Delaware River*" &c June 13th, 1677.

Page 59, "At a Court held at *Upland in Delaware River*" &c Sept. 11th, 1677.

Page 67, "At a Court held at *Upland in Delaware River*" &c Nov. 13th, 1677.

Page 74, Petition of Laurus Cock and others, "being brought *in this river and parts*"—"as well as for the strength of the River and parts" to settle some land below the falls.

Page 76, "For the Justices &c of the Court of Upland *in Delaware River*."

Page 81, the Governor requests all persons that have located or claim "*any land in Delaware River and Bay*" to make return &c Aug. 13th, 1677, &c.

Page 83, "At a Court held at Upland *in Delaware River*" &c March 12th, 1678.

Page 103, "Carell Junsen of Marreties Hook *in Delaware River* this day appeared in Court" &c.



Page 103, "Jan Hendrickson of *Delowar River* husbandman" &c.

Page 105, "At a Court held at Upland in *Delowar River*" &c Nov. 12th, 1678.

Page 109, "Know all men &c that I Christopher Barnes of *Delowar river*" &c.

Page 116, "To all certain people &c Laurance Cock of Shach-amexing in *Delowar river* husbandman" &c Nov. 12th, 1678.

Page 119, the limits and Division between Upland and New Castle Counties fixed Nov. 12th, 1678.

Page 138, "At a Court held at Upland in *Delowar*" Nov. 25th, 1679.

Page 154, "At a Court held at Upland in *Delowar river*" &c March 10th, 1679.

Page 165, Mr Otto Ernest Cock and others appointed Justices of the Peace of Upland Court or County "in *Delowar river* or dependencies" &c May 28th, 1680.

Page 167, "At a Court held at Upland "in *Delowar River*" &c June 8th, 1680.

Page 171, Court removed to "Ye Towne of Kingesse in ye Schuylkills" June 8th, 1680.

Page 175, "At a Court held at Kingesse for Upland County in *Delawar River*" Oct. 13th, 1680.

Page 186, "At a Court held in the Towne of Kingesse in Upland County in *Delowar River*" March 8th, 1681.

Page 189, "At a Court held at Kingesse for Upland County in *Delware River*" &c June 14th, 1681.

Page 195, Grant to William Penn 1681.



The words in the Grant of the Duke of York to William Penn, August 24th, 1682, for the twelve miles circle about New Castle, "*lying on the Delaware river, and all the Islands in said River, and the said River and soyl thereof,*" were used in the same sense, and intended to express the same meaning as the words "*in Delaware river,*" written in the minutes of Upland Court.

The words, "*and said River and soyle thereof,*" as used in the said deed, have reference to the land and territory adjoining Delaware River, and not the soil beneath the water.

It is a mode of expression peculiar to the times in which it was written, and which peculiarity may be readily traced through the public legal proceedings of the Courts of the County or territory where the identical land intended to be assigned is situate.

It is a fair and legitimate construction of the whole sentence, and deprives the words used of any doubtful or uncertain meaning.

To the proposition by the Attorney General of England to fix the southern boundary at twenty or thirty miles northward from New Castle, Penn objected, and said "he should have so little of *ye river* left as very much to prevent y<sup>e</sup> hope he hath of improving y<sup>e</sup> rest within his patent;" evidently not meaning the stream.

#### IV.

The first attempt at settlement of the difficulty between Lord Baltimore and William Penn, in regard to the boundaries of their several grants, appears in the agreement signed May 10th, 1732.

William Penn was then dead, and his three sons, John, Thomas, and Richard, joined with Charles Lord Baltimore, (great grandson of the original grantee), who was also deceased.

A synopsis of said agreement is hereunto attached, in which a full history of the controversy is set out.

The most important paper, however, is the map annexed, and which is said to have been prepared by the first Lord Baltimore himself, remarkably accurate, and giving a fair illustration of the points in question.

This map is mentioned as the basis upon which the lines should be run and the controversy settled.

PENNS AND BALTIMORE—THE FIRST AGREEMENT, DATED  
MAY 10TH, 1732.

“Articles of Agreement made May 10th 1732 between Charles  
Lord Baltimore \* \* \* of the one part and  
John Penn Thomas Penn and Richard Penn \* \* \*  
of the second part \* \* \*

Whereas Charles 1st King &c by Letters patent \* \* \*  
dated June 20th in the Eighth year of his reign A D 1632 Did  
Grant &c to Cecilius, then Baron of Baltimore \* \* \*  
(Great Grandfather of the said Charles Lord Baltimore) all that  
part of a Peninsula \* \* \* between the Ocean on  
the East and the bay of Chesepeake on the West and divided  
from the other part thereof by a right line drawn from the cape  
of land called Watkin's point, in said Bay near the River  
Wigheo on the West unto the main ocean on the East, and  
between that bound on the South unto that part of Delaware  
Bay on the North, which lyeth under the fortieth degree of  
North latitude \* \* \* and passing from the afore-  
said Delaware Bay in a right line by the degree aforesaid \*  
\* \* and all the Islands \* \* \* in the  
ocean, ten leagues from the Eastern shore \* \* \*  
with the jurisdictions Royalties \* \* \*

\* \* \* And Whereas King Charles Second by Let-  
ters patent &c dated March 4th in the 33d year of his reign  
A D 1680, Did Grant \* \* \* unto William Penn  
all that tract of land in America \* \* \* bounded  
on the East by Delaware River, from twelve miles distance  
Northward of New Castle Town unto the forty third degree of  
North latitude if said river extended so far north \* \* \*  
and from said 43d degree Westward five degrees of Longitude  
\* \* \* to be bounded on the North by the beginning

of the 43d degree \* \* \* and on the South by a  
 Circle drawn at twelve miles distant from New Castle \*  
 \* \* with all the Royalties \* \* \*

*And Whereas* By deed dated August 24th 1682 James, Duke  
 of York Granted &c to William Penn \* \* \* and  
 did sell enfeof \* \* \* to the said William Penn  
 \* \* \* All that the town of New Castle \* \* \*  
 \* and all that tract of land lying within the Compass or Circle  
 of twelve miles about the same, lying on the Delaware River and  
 all the Islands in said river, and the said River and soyle thereof  
 lying north of the southernmost part of the said Circle of twelve miles  
 about said town, with all the Royalties \* \* \*

*And Whereas* By another deed of bargain and sale and feoff-  
 ment dated August 24th 1682 Charles 2nd Granted to William  
 Penn \* \* \* All that tract of land upon Dela-  
 ware River and Bay Beginning twelve miles south of New  
 Castle and Extending South to the Whore Kills, otherwise  
 called Capin Lopen which tract of Land has been divided into  
 two Counties and called Kent and Sussex, and with New Castle  
 called the "Three Lower Counties" \* \* \*

*And Whereas* Soon after the Grants unto William Penn,  
 disputes arose between Lord Baltimore and the said William  
 Penn touching the bounds of Maryland and Pennsylvania and  
 Maryland and the Three lower Counties \* \* \*  
 by reason of the doubts of mathematicians as to the place of the  
 fortieth degrees of North latitude (referred to by both Charters  
 of Pennsylvania and Maryland) and also the three Lower  
 Counties &c and some parts thereof comprised within the  
 bounds of Maryland \* \* \*

Now these present articles witness that it is hereby covenanted

1st That the Draught or plan printed in the margin upon  
 this skin of parchment, which contains a map of the Peninsula  
 hereinbefore mentioned, and also of the tracts of ground wherein  
 the said Province of Maryland (or part thereof) the said Lower  
 Counties, part of said Province of Pennsylvania and part of  
 Virginia do lie is a true Copy of those sent over from America  
 \* \* \* for the assistance \* \* \* of said  
 parties in the settling of said disputes and by which this present  
 agreement is to be explained and understood \* \* \*

2d. That there shall be a circle mentioned in the said charter  
 for Pennsylvania and Deed of sale or feoffment of New Castle

(or so much thereof as is requisite) drawn and marked out at the twelve miles distance from the Town of New Castle, to be twelve statute miles. \* \* \*

3d. That a due East and West line shall be drawn across the peninsula, such line to begin on the East part at Cape Henlopen on said map, South of Cape Cornelius &c. toward the main ocean and to run towards the West side which lies on Chesapeake bay. \* \* \*

4th. That from half way on said line across the Peninsula a line shall run Northward up said Peninsula till it touch the Westerly part of the periphery of said circle to make a tangent thereto. The said line will run nearly North and South, but however it may bear it shall run to touch the said circle &c and there shall end. \* \* \*

5th. That said line shall continue to the latitude fifteen miles below the city of Philadelphia. \* \* \*

6th. That a line shall run from said North point (15 miles South of Philadelphia,) Due West, across the river Susquehanna. \* \* \*

7th. That the parts of a circle at present drawn with Red ink on said Map, are drawn as an explanation to this agreement, but not with exact certainty in regard to the plans sent over. \* \*

8th. That the said lines when run shall be conclusive against all parties and shall be the bounds of said Provinces of Pennsylvania Maryland and the Three lower Counties. \* \* \*

*Provided always* \* \* \* that the rivers crossing said lines \* \* \* shall not be held in common for commerce. \* \* \*

9th. That the parties hereto will select within two calendar months from the date hereof, sufficient persons, not more than seven on each side, to run and mark said line and *said part of a circle*. The Commissioners to give due notice of their meetings \* \* \* which work shall begin before the month of October next and be proceeded with despatch. \* \* \*

Stones to be put in and other marks of said line made \* \* \* and the stones marked with the arms of either party \* \* \* the work to be finished on or before the 25th of December 1733. \* \* \* A plan to be made of the lines \* \* \* under the hands and seals of the Commissioners on both sides and by the parties and Recorded in the several offices of the Provinces \* \* \* and that

said lines and monuments shall be examined every three years. *Provided always*, if said Commissioners neglect to meet and run said lines within the time fixed &c then this agreement to be void and the defaulting party to pay the other £5,000.

10th. When the said lines are run and settled then each party to release and quit claim to the other the lands within said boundaries. \* \* \*

11th. The lands sold and conveyed by either party to be held as good to the purchasers thereof but subject to the laws of such province in which they may fall. \* \* \* But persons who have taken double titles shall *not* have the same advantage, but treated considerately.

12th. That any change in this agreement shall be made part thereof. \* \* \*

*Lastly.* All parties to use the best means to reconcile the difficulties and support this agreement. \* \* \*

BALTIMORE.  
JOHN PENN.  
THOMAS PENN.  
RICHARD PENN."

Witnesses  
ABRAHAM TAYLOR.  
JOHN GEORGES.  
JOHN SHARP.  
FRED. JOHN PARIS.  
MATHEW BIDDLE.

"The Commission of John Penn Thomas Penn and Richard Penn to Patrick Gordon, Deputy Governor &c of Pennsylvania, Isaac Norris, Samuel Preston, James Logan, Andrew Hamilton, James Steel, and Robert Charles \* \* \* to act in their behalf in the difficulties aforesaid and under said agreement \* \* \* and any six, five, four, or three of them. \*

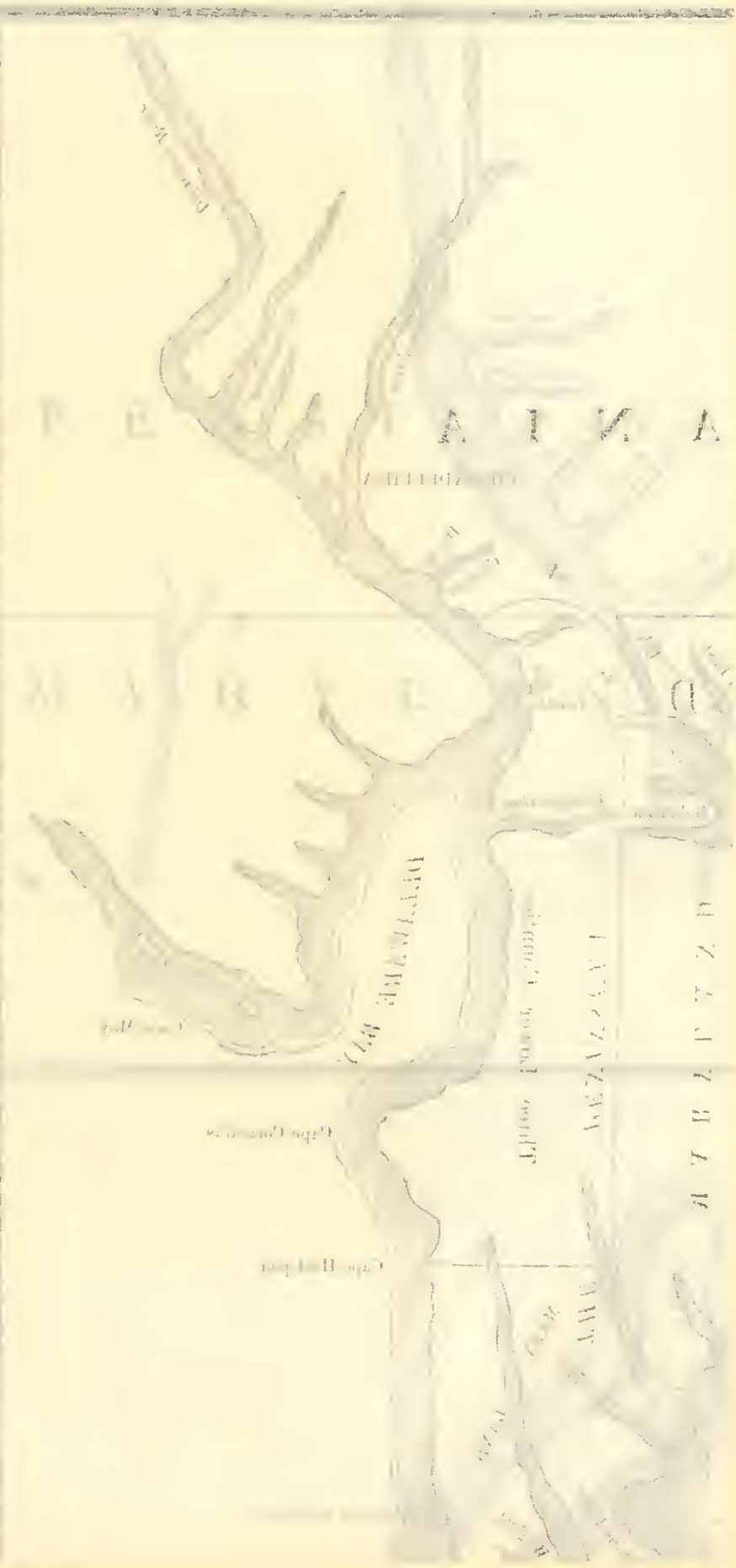
And in case of the death sickness or absence of either of them, then Patrick Gordon, as Deputy Governor, \* \* \* to fill such vacancy. \* \* \*

Witness &c May 12th 1732.

JOHN PENN.  
THOMAS PENN.  
RICHARD PENN."

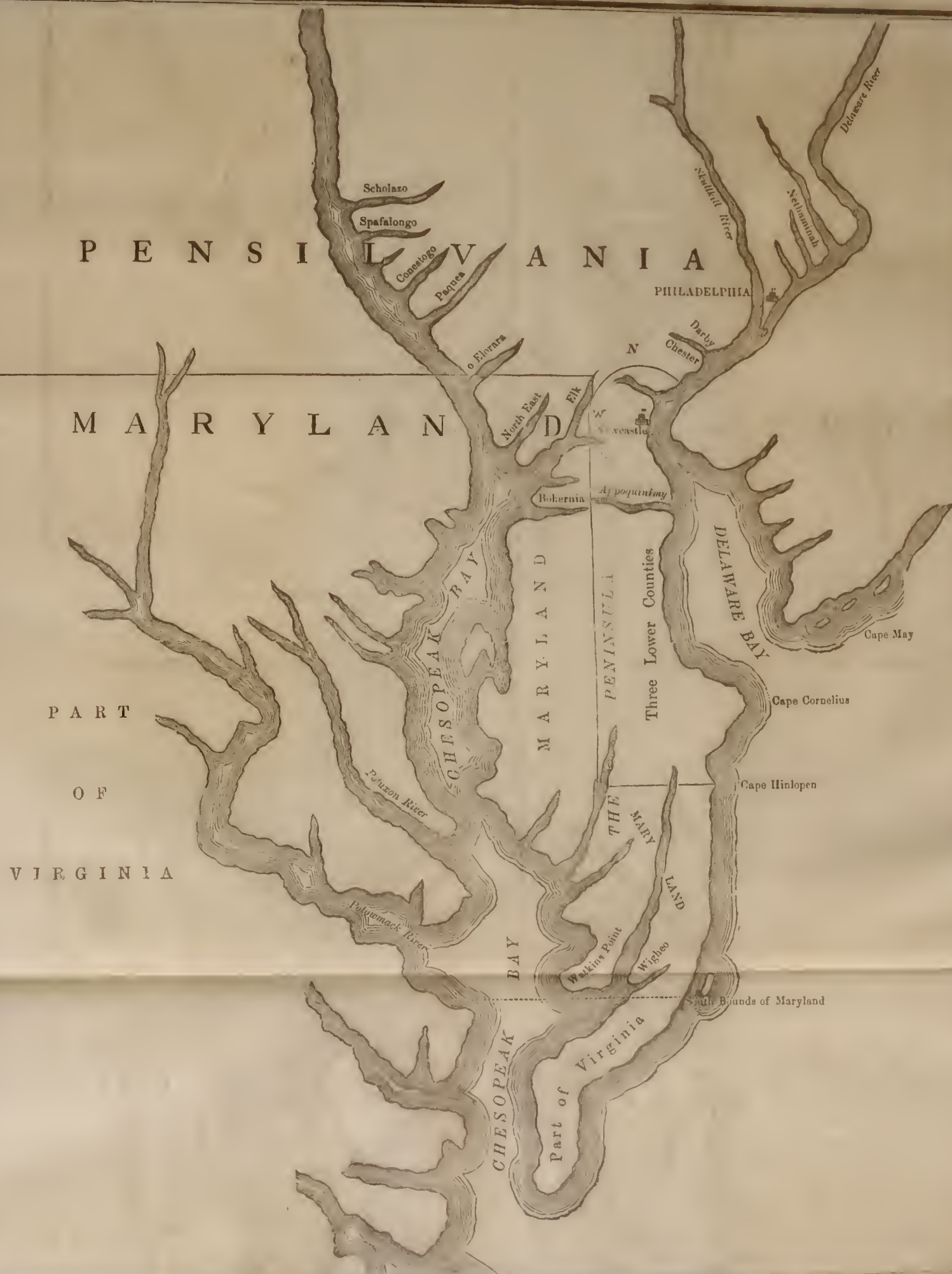
Witnesses  
ABRAHAM TAYLOR.  
JOHN GEORGES.  
JOHN SHEWBART.











PART  
OF  
VIRGINIA

P E N S I L V A N I A

M A R Y L A N D

CHESAPEAKE

James River

Choptank

Sep 1877

Delaware

40

111

For various reasons, no settlement was had under the first agreement, and proceedings in Chancery were commenced and carried to a decree by Lord Hardwicke.

In 1760, a second agreement was entered into, all the original parties being dead.

The map attached to the first articles was agreed upon and adopted as the basis of operations for the Commissioners.

A synopsis of the second agreement is herenunto attached, but the map was not copied, it being a duplicate of that of the first articles of agreement.

PENNS AND BALTIMORE—THE SECOND AGREEMENT, DATED  
JULY 4TH, 1760.

“Indenture of Agreement Fourth day of July 1760 Between  
The Lord Baltimore and Thomas and Richard Penn.

Enrolled in His Majesty’s High Court of Chancery, another  
part of this Indenture the fourth day of July in the year of our  
Lord 1760       \*       \*       \*

This Indenture made the fourth day of July in the thirty  
fourth year of our Sovereign Lord George the Second       \*  
\*       \*       one thousand seven hundred and sixty       \*       \*

Between the right Honorable Frederick Lord Baron of Baltimore in the Kingdom of Ireland only son and heir at law, Devisee and residuary legatee of the right honorable Charles late Lord Baltimore deceased and as such, or under some one of the settlements hereinafter mentioned, true and absolute Lord and Proprietary of the Province of Maryland in America, of the one part,

And Thomas Penn and Richard Penn Esquires, sons and Devisees under the Will of William Penn Esquire, their late father deceased and true and Absolute Proprietareys of the Province of Pennsylvania and the three lower Counties of New Castle, Kent and Sussex on Delaware in America, of the other part.

*Whereas* The said Frederick Lord Baltimore under and by virtue of a certain charter or letters patent bearing date on or about the twentieth day of June which \* \* \* (in the 8th year of Charles the first \* \* \*) and made and granted unto Cecilius then Baron of Baltimore since dec<sup>d</sup>, the Great, Great Grandfather of the said Frederick \* \* \* stands seized and is well entitled unto the said Province of Maryland as in said Charter mentioned.

*And Whereas* The said Thomas and Richard Penn by virtue of a certain other charter &c dated March 4th in the 33d year of Charles Second &c, made and Granted unto William Penn since dec<sup>d</sup> late father &c stood seized and was well entitled unto the said Province of Pennsylvania \* \* \*

*And Whereas* By virtue of *three* other Charters &c the first dated March 12th in the Sixteenth year of Charles Second \* \* \* The second dated June 29th in the twenty sixth year of Charles Second \* \* \* The third dated March 22d in the thirty fifth year of Charles Second \* \* \* made and granted to the Duke of York, afterwards King of England, but since deceased.

And also by Virtue of *two* Indentures of Feoffment with livery \* \* \* *each* dated August 24th 1682, and made and granted by the Duke of York to William Penn dec<sup>d</sup>, and by Virtue of other Conveyances \* \* \* stands seized of the said *three* lower Counties of New Castle, Kent and Sussex on Delaware, in America, as in said deeds of Feoffment described \* \* \*

*And Whereas* The said three lower Counties were heretofore Called by the name of Delaware or the Province of Delaware, And some part of the said Province of Maryland and also part of the said three Lower Counties do lie within a Certain Peninsula in America hereafter mentioned, And the said Provinces of Maryland and Pennsylvania and the said Territory now called the Three lower Counties of \* \* \* lying adjacent and Contiguous (at least in some parts of the same) each unto the other, Very long litigations and Contests have subsisted from the year 1683 down to the present time, and many orders have been pronounced in Council relative thereto.

*And Whereas* In order to put an end to Litigations and Contests Certain Indented Articles of Agreement dated May 10th A D 1732 were entered into under hands and seals and by and



between the said Charles Lord Baltimore on the one part (father of said Frederick \* \* \*) and *John Penn Esquire* the late Elder brother of Thomas and Richard Penn, and since deceased, *without issue* and the said Thomas and Richard Penn on the other part, upon the side of which said Articles of Agreement, *the like Draft, Plan, Diagram or Figure* was printed or impressed as is printed or impressed upon one of the skins of Parchment whereon this present Indenture is engrossed, And by which said Articles of Agreement \* \* \* it was agreed in the words following \* \* \*

That it is hereby Covenanted and agreed &c by each of the parties to these presents \* \* \*

*First.* That the Draft or plan printed upon the margin of this skin of Parchment which contains a map of the Peninsula hereinbefore mentioned, Also the land wherein the Province of Maryland (or part thereof) the said Three Lower Counties, Part of said Province of Pennsylvania and part of Virginia do lye, is a *true Copy* of those sent over from America to the present parties hereto by their Agents in those parts &c for the guidance &c of the said parties in settling the said disputes, and by which this agreement is to be *explained and understood* \* \* \*

*Second.* That there shall be the said circle mentioned in said charter for Pennsylvania and deed of Feoffment of New Castle (or so much thereof as is requisite) drawn and marked out at the twelve miles distance from the town of New Castle, which twelve miles shall be twelve English statute miles. \* \* \*

*Third.* That a Due East and West line shall be drawn across the Peninsula \* \* \* to begin on the East part at a place in said map called Cape Henlopen (which lies south of Cape Cornelius) and to run towards the Western side of said Peninsula on Chesapeake bay \* \* \* but to stop in the *exact middle* of said Peninsula. • \* \* \*

*Fourth.* That from said middle of said East and West line a line shall run Northward up the said Peninsula, until it shall touch the Western part of the periphery of the said circle to make a tangent thereto, (which said line as at present apprehended will run pretty near North and South \* \* \*) to begin as aforesaid and run to touch said circle, *and there to end.*

*Fifth.* That at the North end of said line a line shall begin, and run due North above the said Peninsula, but so far only untill



it comes into the same latitude as fifteen English statute miles South of the Southern part of Philadelphia. \* \* \*

*Sixth.* That a due East and West line shall begin at the North end of said line and run due West \* \* \* crossing the Susquehanna river \* \* \* and to be the line between Maryland and Pennsylvania. \* \* \*

*Seventh.* That the part of the circle drawn with red ink upon said Draft and the Red lines drawn thereon, are to serve as an explanation to this agreement, *but not with exact certainty,* \* \* \* in regard to the Maps sent over. \* \* \*

*Eighth.* That the first named East and West line from Cape Henlopen, and the North and South line from the middle of the Peninsula to the circle \* \* \* and thence continued \* \* \* Northward, and the Due West line \* \* \* crossing the Susquehanna river &c shall at all times hereafter be allowed and esteemed to be the true lines \* \* \* between the Province of Maryland and three lower Counties of \* \* \* and the Province of Maryland and Pennsylvania, *excepting only,* that in case the said North line break in upon the said circle, and in such case so much of said circle as is cut off by said line shall belong to the County of New Castle \* \* \* Provided Regulating the Commerce on the Rivers crossing any of said lines as to be run. \* \* \*

*Ninth.* The parties within two months to appoint proper persons to run said lines, not more than seven on each side, to be called Commissioners \* \* \* Due notice to be given of their first meeting. \* \* \* That the said line shall be marked by visible stones, trees \* \* \* to be marked with the Arms \* \* \* of each party. \* \* \* The work to be finished before December 25th. A D 1733.

The said Commissioners to make proper Maps and Reports \* \* \* to be signed by the Commissioners and by the Parties to this agreement \* \* \* and Recorded in all the public offices of the said Provinces. \* \* \*

That laws be passed in each Province that said lines be visited by proper persons at least once in three years to keep up the monuments on said line. \* \* \*

If a Quorum of said Commissioners cannot be had according

to the intention of this agreement then the same to become void and the party neglecting or refusing, to forfeit £5,000. \* \*

*Tenth.* Lord Baltimore renounced and released all claim to the three lower Counties \* \* \* unto Thomas and Richard Penn \* \* \* as to be fixed by the Commissioners. \* \* \*

Thomas and Richard Penn renounced and released all claim to the Province of Maryland unto Lord Baltimore \* \* \* as to be fixed by the Commissioners. \* \* \*

*Eleventh.* The titles of Settlers to be made good by either party. \* \* \*

*Twelfth.* Relating to settlers. \* \* \*

*Lastly.* All parties to use their best endeavour to preserve peace and good neighbourhood. \* \* \*

*And Whereas* the said Boundaries were *not* run and settled as agreed upon \* \* \* and after the time limited had passed the said Charles Lord Baltimore on the 8th day of August A D 1734, Petitioned in his own name the King and Council to further confirm his charter, to so much of said Peninsula as was confirmed therein. \* \* \*

This was opposed by a Counter petition from John, Thomas and Richard Penn dated December 19th 1734 \* \* \*

The petition of Lord Baltimore was reported upon but adjourned by the King's order dated May 16th 1735 to the end of Michaelmass term, that John, Thomas and Richard Penn might have opportunity to proceed in a Court of Equity \* \* \* to obtain relief &c upon the said articles of agreement insisted on by them, and after the Expiration of said time either party to have liberty to apply to the Committee of Council for Plantation affairs \* \* \*

Therefore John, Thomas and Richard Penn June 21st 1735 Exhibited their original bill in the Court of Chancery \* \* \* against the said Lord Baltimore, as defendant. Said Bills were amended at various times. John Penn deceased and his Executors made parties \* \* \* In said Bill the plaintiffs prayed they might be quieted in their possession of the three lower Counties. That Baltimore be restrained from prosecuting his Claim. *That the Articles of Agreement* dated May

10th A D 1732 may be decreed to Exist &c and be in force \*  
 \* \* and be carried out \* \* \*

That all doubts set up by Baltimore be removed and explained \* \* \* so that the parties might make proper exchanges of title as agreed upon \* \* \* That Baltimore might be decreed to pay all the Costs incurred under the Agreement of May 10th 1732 \* \* \*

Lord Baltimore put in his answer, Claiming fraud and imposition in obtaining said agreement \* \* \* that said agreement was void \* \* \* that no relief be granted \* \* \* And the cause was heard before the Lord High Chancellor \* \* \* in presence of the parties, their Council Witnesses \* \* \* May 3-4-7-8-9 11 and 15—1750.

And on the 15th of May 1750 the Chancellor made a decree \* \* \* as follows.

That the Articles of Agreement of May 10th 1732 *are valid and obligatory* \* \* \*

That said Agreement should be executed &c notwithstanding the limited time therein named had elapsed \* \* \*

That the said Articles *do not* bind or *prejudice* any prerogative, or right of the Crown in said Territories \* \* \* nor of any purchaser or settler in said territories &c Therefore the Chancellor Decreed that the Articles of May 10th 1732 be carried into effect \* \* \*

And the parties were ordered, within three months to execute two Instruments appointing proper persons (not more than seven on each side) with full power to said seven persons (or any three of them) to run, mark and fix *the part of* a circle and the several lines mentioned \* \* \* To give due notice \*

\* \* \* To be began before some time in November next. That monuments be set up \* \* \* on either side with the arms of the owners \* \* \* The whole to be done before the last day of April 1752.

A Copy to be made, signed by the parties and Commissioners and Recorded in all the proper offices \* \* \* Mr Spicer a Master in said Court to settle all disputes \* The Court also decreed that the Centre of the Circle be as near the middle of the Town of New Castle as possible, and that the said Circle ought to be of a Radius or semi-diameter of twelve

miles \* \* \* That the Cape be taken where it is  
 laid down in the map annexed to said articles \* \* \*  
 That the respective parties release and convey each to the other,  
 such land as may be settled by the lines to be in each other's  
 Grant or Charter \* \* \* The decree not to preju-  
 dice the rights of the Crown \* \* \* in said lands.  
 The rights of the tenants and owners not to be prejudiced \*  
 \* \* Costs to be taxed by the Master \* \* \*  
 and defendant to pay Costs \* \* \*

Lord Baltimore submitted to said decree and the parties  
 selected the Commissioners \* \* \* The Commis-  
 sioners proceeded but other objections were raised, on behalf of  
 Lord Baltimore \* \* \*

Thomas and Richard Penn again petitioned the Chancellor  
 March 16th 1750, that the twelve miles Circle should be accord-  
 ing to horizontal and not superficial measure, and that the  
 fifteen miles South of Philadelphia be in like measure, &c.

The petition was heard March 27-29 1751, and the Chan-  
 cellor decreed March 29th 1751,

That *the part* of a Circle mentioned in said decree to be drawn  
 around New Castle be at twelve miles distant from the Centre  
 according to horizontal and not superficial measure, and that  
 fifteen miles South from Philadelphia be in the same manner  
 \* \* \*

Ordered that the Commissioners be governed accordingly.

Charles Lord Baltimore died in England April 23d 1751,  
 leaving the said Frederick his son and heir, *an Infant*, his Will  
 dated November 17th 1750, and devised the residue of his  
 estate to the said Frederick \* \* \*

The Commissioners proceeded and on the 26th day of April  
 1751, signed an agreement as follows.

*First.* That a due West line be run and marked (to begin at  
 a point 139 perches due East from a Stone &c on the Northerly  
 part of Fenwick Island) across the Peninsula to Chesapeake  
 Bay \* \* \*

*Second.* That this point be taken as the Cape Henlopen \*  
 \* \* that at the distance of half way across the  
 peninsula, a line be started, and drawn to the Periphery of a  
 Circle twelve miles distant from New Castle, subject to the Con-  
 firmation or rejection of the Chancellor in England \* \*

The Commissioners Ran the West line from Cape Henlopen to Slaughter Creek, 66 miles and  $248\frac{1}{2}$  perches where Lord Baltimore claimed it should stop, when the distance should be 69 miles and 298 perches, &c This line ran through Taylor's and James' Islands \* \* \*

Lord Baltimore deceased before the work was finished, but the Commissioners did not hear of his death until after the work was done \* \* \*

The half distance across the Peninsula was 34 miles and 309 perches \* \* \*

November 8th 1754 the Plaintiffs again applied to the Chancellor and asked a decree that Slaughter Creek was not half the distance across the Peninsula \* \* \* November 21st 1754 the order was revived and Lord Baltimore answered, March 22d 1755, and insisted on certain settlements said to be made of the Province of Maryland by Release dated December 31st 1698, and by others dated July 11th 1730, and that his rights ought not to be affected by the Articles of Agreement as executed by his father.

Said plea was argued May 7th 1755, and the family settlements handed over to the Plaintiffs for examination \* \* \* One deed of Settlement dated December 31st 1698 and another dated July 11th 1730, and an agreement dated March 9th 1753.

The Plaintiffs (the Penns) obtained an order dated May 16th 1755, to amend their bill &c, and September 6th 1755 filed a new Bill \* \* \* amended \* \* \* and put in issue the several deeds of settlement aforesaid \*

\* \* \* and insisted the Defendants were bound to carry out the Agreement of May 10th 1732 and the decree of May 15th 1750, and the order of March 29th 1751, \* \* \* and also insisted on the validity of the said Commissioners' last proceedings, and that the former suit, enrolled decree and order and all other proceedings therein which abated by the death of Charles late Lord Baltimore might stand and be revived in full force against &c the said defendants, or as many of them as have any estate in Maryland \* \* \* And if such order be made then the Plaintiffs to have a decree for discovery \* \* \* of the real and personal assets of the said Charles Lord Baltimore, and that the same might be secured for the Plaintiffs to pay Costs \* \* \* and to pay for

Damages already incurred and what may occur by the breach of the said Agreement and its non performance, dated May 10th 1732.

That the said Enrolled Decree and subsequent order might be decreed to be performed \* \* \* and that the Plaintiffs might have decree and perpetual injunction to hold and enjoy them in said territories so released by the said Charles Lord Baltimore &c by the agreement of May 1732 as against the defendants \* \* \* and the Costs of this suit \* \* \* That the doubt touching the extent Westward to run across the Peninsula might be cleared and settled by the Court, and general relief \* \* \*

*And Whereas* The parties to these presents have come to an agreement in the manner hereinafter mentioned,

*Now this Indenture Witnesseth* That for the putting a *final* and *perpetual end* forever to all disputes \* \* \* relating to the extent, bounds \* \* \* of the said Province of Maryland, Province of Pennsylvania and the three lower Counties \* \* \* on Delaware in America \* \* \* The said Frederick Lord Baltimore \* \* \* Doth Covenant Promise \* \* \* to and with the said Thomas Penn and Richard Penn \* \* \* that the Commissioners last respectively appointed \* \* \* did justly agree upon fix and determine the true spot &c for Beginning from where to measure the West line across the Peninsula which was directed by said agreement and enrolled decree.

That the said spot or point of the Beginning of said West line shall forever hereafter be taken as the said point, viz on the verge of the main ocean 139 perches East of a Stone on the Northern part of Fenwick's Island &c said stone marked with the arms of the parties \* \* \* And said point to be Cape Henlopen \* \* \* named in the Agreement of May 10th 1732.

That the said Commissioners fixed the true meridian &c and justly measured the West line &c *across* the *whole* Peninsula to Chesapeake Bay \* \* \*

That said line measured 69 miles and 298 perches, and that said distance is the true one \* \* \*

That the middle point is 34 miles and 309 perches from the



Beginning \* \* \* where a large stone, marked  
 \* \* \* shall be placed, marked with the Arms \*  
 \* \* That the said Frederick, Lord Baltimore will,  
 within thirty days from this date, appoint *seven* Commissioners  
 on his part, to run and mark said lines \* \* \*  
 agreeable to the intent of the former Agreement, Decree and  
 order, *and of these Presents.*

That this settlement shall conclude them the Defendants and  
 all persons Claiming under them \* \* \* touching  
 Pennsylvania and the three lower Counties \* \* \*  
 with all their rights Royalties \* \* \*

The said Province and Counties to bound and be bounded  
 according to the agreement of May 10th 1732 and Decreed by  
 the Court of Chancery \* \* \* May 29th 1751  
 \* \* \*

That the said Frederick Lord Baltimore &c will hereafter do  
 all other things necessary to carry out this agreement \* \* \*

That the said Frederick Lord Baltimore will within *three*  
 days after the Execution of these presents, acknowledge his  
 execution thereof before a Master in Chancery \* \* \*

That within thirty days after the said Thomas and Richard  
 Penn shall file a Bill in Chancery the said Lord Baltimore will  
 file an answer thereto \* \* \* and in said answer  
 shall admit as are herein by him admitted and that he and all  
 persons claiming under him shall be bound to obey \* \* \*  
 the former agreement, the enrolled Decree and subsequent order  
 of the Court of Chancery \* \* \* and also the  
 proceedings of said Commissioners, about the Beginning of the  
 said West line and the Meridian line, and the Running of the  
 said line, and the length of the same \* \* \*

That said Bill and answer shall be settled by the Council on  
 both sides \* \* \* That the Defendants shall not  
 pray any Costs \* \* \* and that all proceedings  
 shall be dismissed \* \* \*

That the defendant shall consent to the setting down of said  
 Cause to be heard before the Chancellor upon the Bill and  
 answer.

That the Defendant shall appear without service of subpoena  
 \* \* \* and that he the Lord Baltimore will consent  
 to a decree being pronounced against him agreeable to the intent

of these presents \* \* \* and that either party may  
apply to the Court for direction \* \* \*

That the Defendant shall not oppose said Decrees being made  
\* \* \* and if the Plaintiffs conclude, before or  
after said Cause be heard, to lay this present Indenture before  
the King and pray the ratification of the said former articles  
\* \* \* the Enrolled decree and the subsequent order  
\* \* \* to be forever established between the Pro-  
prietarys of said Provinces and Counties &c for the peace \*  
\* \* the said Defendants shall join in said petition  
or give his consent thereto &c in writing \* \* \*

*And Whereas* The said Plaintiffs \* \* \* are  
now in actual possession of the said lands \* \* \*  
herein named \* \* \*

*Now this Indenture Witnesseth* That for the ends &c and to  
render these presents more valid and for five shillings paid \*  
\* \* the said Defendant Hath \* \* \* Re-  
leased, Quit-Claimed \* \* \* unto the said Plain-  
tiffs \* \* \* all the said Province of Pennsylvania  
in America with the Royalties \* \* \* and also the  
*Three* lower Counties \* \* \* upon Delaware in  
America \* \* \*

The same to be bounded according to the Agreement of May  
10th 1732, the Enrolled Decree and the subsequent order &c of  
March 29th 1751 and according to the intent and meaning of  
these presents \* \* \*

That any land sold and conveyed by Lord Baltimore &c  
within the Province of Pennsylvania or the Three lower coun-  
ties, the title to be held good. \* \* \*

Also of the land sold by William Penn \* \* \*  
in Maryland. \* \* \*

And this Indenture also Witnesseth &c. that for the purpose  
of ending all disputes \* \* \* the said Plaintiffs  
\* \* \* Do Covenant with Frederiek Lord Baltimore  
\* \* \* that the Commissioners &c Did fix upon the  
true point to Begin the said West line, which was agreed in the  
Articles \* \* \* and also decreed \* \* \*  
viz at a stone \* \* \* (described herein before,)  
which shall be conclusive \* \* \* and which shall  
be taken as Cape Henlopen. \* \* \*

That the said Commissioners did justly fix the meredian line  
 \* \* \* did measure the West line properly \*  
 \* \* and fix the length \* \* \* that the  
 middle of said line was 34 miles and 309 perches from the Be-  
 ginning. \* \* \*

That a stone be placed at the said middle of the West line. \*

That the said Plaintiffs will within thirty days from the date  
 of these presents appoint seven persons as Commissioners \*  
 \* \* and not less than three of them to run and mark *all*  
*such parts of said circle* and boundarys as are not yet completed  
 \* \* \* according to the intent and meaning of the  
 former articles, decree and subsequent order \* \* \*  
 and the agreements in these presents contained. \* \*

That said Commissioners shall proceed at once &c and that no  
 further suits or litigations shall be prosecuted by these plaintiffs  
 or those claiming under them against the Right of the Defend-  
 ant \* \* \* according to the agreement of May  
 10th 1732 and by the enrolled decree and subsequent order dated  
 May 29th 1751, and according to these presents. \* \*

And the said Plaintiffs will do all other things necessary to  
 carry out the said settlement. \* \* \*

And that three days after the said Frederick Lord Baltimore  
 shall acknowledge the execution of these presents (as before agreed  
 upon) the said Plaintiffs will cause these presents to be enrolled  
 in the Court of Chancery. \* \* \*

And that within thirty days after the said Plaintiffs shall ob-  
 tain a copy of the answer filed by the said Defendant, make  
 proper application to the court to have the said cause set down  
 for a hearing \* \* \* at an early day \* \*  
 and will give notice of such application \* \* \* to  
 said Defendant \* \* \* with privilege to amend  
 That the said plaintiffs will not oppose the decree of the court.

And if the said defendant desires (before or after the hearing  
 of said cause) to lay this present Indenture and the matters here-  
 tofore mentioned before the King \* \* \* to pray  
 the confirmation of the former articles of agreement, the enrolled  
 decree or the subsequent order of the Court of Chancery \*  
 \* \* that the said Plaintiffs will join in such Petition &c  
 or give their consent \* \* \* to the same.

And that the said Plaintiffs will execute proper Releases

\* \* \* to said Defendants for costs of the previous  
suits \* \* \* and damages \* \* \*  
by virtue of the agreement of May 10th 1732 \* \* \*  
Decree and Order. \* \* \*

And now this Indenture moreover Witnesseth that for the  
ends \* \* \* and to render these presents more  
valid \* \* \* and for 5 shillings \* \* \*  
by the said Lord Baltimore to the said Thomas and Richard  
Penn paid \* \* \* Doth fully &c Release the said  
Province of Maryland \* \* \* to the said Lord  
Baltimore \* \* \* to be bounded by the agreement  
of May 10th 1732 and the enrolled Decree and subsequent order  
of March 29th 1751 &c and the intent of these presents. \*

That no occupant of land &c be disturbed \* \* \*  
but hold quiet possession. \* \* \*

In Witness Whereof. \* \* \*  
F. [L.S.] BALTIMORE. THOS. PENN. [L.S.] RICH'D [L.S.] PENN.

## V.

In the questions submitted to witnesses in view of the suit in  
chancery between Lord Baltimore and the Penns, the meaning  
of the words "in Delaware River," and "the said river and the  
soyle thereof," as written in the deed from the Duke of York to  
William Penn, appear to have been inquired into.

These witnesses were old residents along and on both sides of  
the river Delaware, and familiar with the Dutch and Swedish  
history of the settlements thereabouts.

William Peterson, aged ninety-two years. Never heard it  
called by any other name than "the bay or river."

John Rambo, aged seventy-nine years. "Heard the said  
countries were first called 'New Swedeland' by the Swedes, and  
afterwards by the Dutch called South River, and sometimes  
'Delaware River.'"

James Logan, aged sixty-six years, says—"The Dutch called  
the bay and river 'South River'"—the grant of the Duke to

Penn of countries all on the west side of Delaware, formerly called by the Dutch South River, but now by the English called Delaware River.

Thomas Noxon, aged forty years, says—"That he has formerly heard the said countries, by some ancient Dutch people residing in the Province of New York, called by the name of South River; that from the conquest by the English—1664 to 1680—the said lower counties were sometimes called South River, afterwards Delaware, Delaware River, Delaware River and Bay."

The extracts from said depositions, as made, are hereunto annexed.

EXTRACTS TAKEN FROM THE PHILADELPHIA DEPOSITIONS  
(1740) BETWEEN PENN AND BALTIMORE.

William Peterson, of Gloucester county, N. J., aged ninety-two years. Knew the land between New Castle and Whorkill before William Penn come; when he come here the land was in possession of the Dutch, and had heard the Swedes say the land was occupied by their nation formerly—before the Dutch; knows the bay or river of Delaware, and never heard it called—from the mouth, between Cape May and the Whorekills, where it enters the sea, upwards—by any other name than the bay or river; come to this country about eighty-two years ago, and hired for twenty years next after on Christiana Creek, three or four miles from the mouth, but has since lived in Gloucester county, N. J.; never knew that the counties of New Castle, Kent, and Sussex have been under the government of Lord Baltimore.

John Rambo, of Gloucester county, N. J., farmer, aged seventy-nine years. Is acquainted with New Castle; has been at the place anciently called Whorekills; heard from his father and other old people that the lower counties were settled originally by Dutch and Swedes; the said deponent knows the said countries have since been under the government of the English; has heard the said countries were first called "New Swedeland" by

the Swedes, and afterwards by the Dutch called "South River," and sometimes were called or known by the name of "Delaware River;" that the said Province of Pennsylvania has been called by that name ever since William Penn become the proprietor; don't know by what name the three lower counties have been called since that time; no part of said three lower counties was ever under the authority of Lord Baltimore.

Elizabeth Morris, widow, aged sixty-five years, of Philadelphia. That Sussex county extended south of Indian River; several persons she knew lived there—the Burtons, Stokelys, and one Fenwick; Fenwick owned Fenwick's Island—was under the government of Pennsylvania.

Samuel Hollingsworth, aged sixty-seven years. First arrived at the town of New Castle in 1682; in 1701 removed to Chester county.

One evening in 1683 one Col. George Talbot, of Maryland, come to his father's house with others; stayed all night; said he was running the line to divide the Provinces of Maryland and Pennsylvania, by Lord Baltimore's order; that he began the said line at the mouth of the Octarora, and from thence due east to Delaware; returned and stayed the next night at his father's house; Col. Talbot told his father he had finished the line; saw the marked trees of the line; could show the course; understood it ended a little below the mouth of Naaman's Creek; it was sometimes called "Talbot's" line, but generally "Baltimore's line;" has heard that soon after the running of said line, Lord Baltimore built a fort some miles southward of said line, to take possession, &c.; it was a little log house, and scarcely deserved the name of "fort;" that part of the line running through New Castle county was never regarded by the people as the boundary.

John Musgrave, aged seventy-three years. Come into this country in 1682; lived in New Castle county for four years, and then removed to Pennsylvania; remember seeing William Penn at Robert Wade's house in 1682, in the town called Chester, and where said Penn generally lodged; was servant of Valentine Hollingsworth; Col. Talbot come there one night; said he was running the line between Maryland and Pennsylvania; saw a



line of marked trees in said line ; has heard it ended at Delaware River, a little below Naaman's Creek.

James Logan, aged sixty-six years. William Penn died in the year 1718 ; know a peninsula between West New Jersey and Chesapeake Bay, from my own observation, maps, geography, &c. ; believes Capt. John Smith's History of Virginia and New England from their beginning (1584) to this present (1624), with the maps, &c., in six books ; was the first Englishman that printed any map, &c., of said peninsula and the adjacent lands, &c. [Book shown.] Believes the said book is well known among historians ; that the Dutch called the bay and river "South River ;" the upper part of the three lower counties was called "Sandthook," and the lower "Whorekill ;" *that the lands on both sides of the river and bay were called by the Dutch New Netherlands, and after it was captured by the English (1664) was called "Delaware ;"* the upper part of New Netherlands was called the "County of New Castle ;" the town called New Castle was built by the Dutch, and afterwards the said peninsula was called the "Three Lower Counties ;" and after the arrival of William Penn, he having obtained from the Duke a grant of the said countries *situate on all the western side of Delaware*, from the Province of Pennsylvania southward, changed the name of the county of Whorekill or Deal to that of Sussex, and changed the name of the county called St. James to "Kent," but the town and county of New Castle still retain their former appellation ; that one Legislature sat for both the three lower counties and Pennsylvania from 1683 to 1704, and then had separate assemblies.

Never heard the three lower counties called by any other name, except some to the name of *Delaware* added the word "settlement ;" held several offices under the Government ; that William Penn and those after him have always had possession of said three lower counties ; that no person, to his knowledge, holds any land in said three counties by grant from Lord Baltimore ; the most ancient grant is from Mynheer Stuyvesant, Governor of the Dutch, and after the year 1664, the grants were made by Richard Nichols, &c., and from the year 1682, from William Penn ; and after the year 1701, the Commissioners of Property (of which he was one) signed the deed &c. ; that Wil-

liam Penn appointed persons to collect the quit rents in the three lower counties; that Queen Christiana, of Sweden, (between the years 1640 and 1645), sent a large Colony into the same Bay and River, and made considerable settlements on both sides of the River, on the west side at Christiana Creek, at or near Upland, which name William Penn changed to Chester; that the Government of New York sent a fleet to conquer the Swedes; they surrendered; that the English captured from the Dutch said Bay and River of Delaware, formerly called by the Dutch "South River," but now by the English called Delaware River; captured again by the Dutch, and again restored by Treaty to the English; that William Penn arrived here in 1682, and brought a vast Colony of *thirty-two ships*, at sundry times before he left, in 1684; that the Dutch and Swedes had bought of the Indians the greater part of the land below Duck Creek, in the three lower counties; and that Penn's Commissioners bought of the Indians (1685) from Duck Creek upwards to Chester or Upland Creek, which lies about five miles above, north of the northern boundary of the three lower counties; that Penn and his deputies exercised Government over said three lower counties, from 1682 to 1702 (excepting in 1693 and 1694, when William and Mary appointed Benjamin Fletcher Governor); that this deponent was one of the Commissioners appointed to run the line between Maryland and Pennsylvania (1732).

[Many papers, covered with deponent's history of running the Circle, &c.]

At a meeting of the parties, held in London, in May, 1724, Lord Baltimore produced a map of the Bays and Peninsula, which was the fairest and largest map of the same this deponent had ever seen, &c.

John Teague, eighty-five years old, of Somerset County, Maryland.

Abraham Allman, fifty years old. Is pretty well acquainted with New Castle County; always heard the three counties called the "Three Lower Counties."

David Hazard, seventy-three years old.

Brickers Townsend.

William Wapples.

John Prettyman.

Woodman Stokeley.

John Anderson.

John Carnon.

William Beckett. Has travel'd from New Castle to Philadelphia by the common road; do not know of any bay or river that separates the county of New Castle from the Province of Pennsylvania; that Philadelphia is about thirty-six miles from New Castle.

Gideon Griffith. That it is about thirty-five miles from New Castle to Philadelphia; there is no bay or river between; the said towns are not on opposite sides of the bay or river.

John McArthur.

James Scotten.

Thomas Powell.

George Lawson.

John Scott.

Andrew Porter.

George Ross.

Samuel Preston, aged seventy-five years. Saw William Penn when he first came into the Province (1682), and became acquainted with him on his second coming, about forty-one years ago; William Penn deceased 1718; has been a member of the Governor's Council for thirty-three years past; Treasurer of the Province; was Mayor of Philadelphia, &c.; the three lower counties were

always under the government of the Duke of York and William Penn; has lived in Philadelphia since 1736; that *he hath known Delaware Bay about fifty years, and believes the head of the same is at Bombay Hook*, and about twenty-five or thirty miles to the south of the middle of the town of New Castle; the distance between New Castle and Philadelphia is about thirty-six miles; that there is no bay or river between New Castle County and the Province of Pennsylvania; was one of the Commissioners to run and mark the Circle, &c.

Edward Chambers.

George Fitzwater. *Bombay Hook is the head of the Bay*, about thirty miles southward of the middle of New Castle town.

William Biddle, aged forty-three years.

Abraham Taylor.

Thomas Noxon, aged forty years. That he has formerly heard the said counties, by some ancient Dutch people residing in the Province of New York, called by the name of the South and South River; and from the Dutch records at the city of New York, he has learned that, from 1630 to 1664, *the three lower counties were called South River*, particularly where Lewestown stands was called Whorekill; where New Castle stands, called Sandthook; afterwards, Fort Cosamir; and afterwards, New Amstel; from the English records at New York, that from the conquest by the English, 1664 to 1680, the said *lower counties were sometimes called the South River; afterwards, Delaware, Delaware River, and Delaware Bay*—sometimes the one and sometimes the other; more particularly by the name of New Castle and dependencies, the Whorekills and dependencies; that William Penn, soon after his purchase of the Duke of York, erected the same into three counties, by the name of New Castle, Kent, and Sussex; has heard many ancient Dutch and Swedes say that all the land of the west side of the Bay and River, from the ocean to the falls of the Delaware, was under the government of the Dutch at the city of New York, then called

New Netherlands; that about the year 1664, the said lands fell under the government of the English; never heard the said lands were, under the government of Lord Baltimore.

Jacob Heulings, of Burlington county, N. J., aged fifty-eight years, a Deputy Surveyor of West New Jersey. Has examined the map, and run some of the lines; found them correct.

Thomas Miles, of Salem county, N. J., aged forty-nine years, a Deputy Surveyor of West New Jersey. Has surveyed lands on the eastern side of the river for sixteen years past; has taken the width of the river in two places; made a map of the same from eight miles below New Castle to ten miles beyond the said town.

Samuel Haskell, aged forty-nine years.

William Vanderspiegel, aged twenty-three years.

James Steel, aged sixty-five years. Was one of the Commissioners to run the lines between the three lower counties and Pennsylvania, and Pennsylvania and Maryland, 1732; *that there was about one hundred thousand acres of land granted by the authority of those under William Penn, held within the three lower counties before 1682; and that between that time and June, 1735, about three hundred and twenty-eight thousand acres have been granted by Penn and his heirs.*

John Housman, of Delaware, aged forty-four years.

Sheppard Kolluck, of Delaware, aged twenty-six years.

John Taylor, of Pennsylvania.

Hereford Lardner, of Pennsylvania.

William Shaw, of Delaware.

Benjamin Eastburn, of Pennsylvania, aged forty-four years. Made various maps of the Peninsula, and other parts, from old papers, observations, &c.

Jeremiah Langhorne, of Pennsylvania, aged sixty-six years.

Charles Broekden, of Pennsylvania.

William Sill, of Pennsylvania, aged forty-three years.

James Hendricks, of Pennsylvania, aged seventy-three years.

John Hans Steelman, of Pennsylvania, aged eighty-five years.

Elizabeth Murphy, of Pennsylvania, aged forty-three years.

Margarett Allen, of Pennsylvania, aged thirty-nine years.

Patrick Baird, of Pennsylvania, aged forty-seven years.

Benjamin Chew, of Delaware.

Andrew Hamilton, of Pennsylvania, aged sixty-four years. Appointed one of the Commissioners to run the line between the lower counties and Pennsylvania and Maryland.

With the Maryland Commissioners, was at New Castle to fix the centre of the circle; walked about to view the town with Commissioners and others of the town, among whom was one John Hoare, then Surveyor of the county of New Castle, since deceased, who then and there produced a map or plan of New Castle—an old map, &c.—which he found among the papers belonging to the office of Surveyor, &c., when he was first appointed Surveyor, and has good reason to believe said map was drawn by one Arnoldus de la Grange, who was an ancient, considerable inhabitant of said town of New Castle, at and before the grant thereof to William Penn, Esq.; had many ancient deeds and public writings, dated before the said grant, and also the instrument of allotment of the tenants of New Castle aforesaid to the said William Penn, on his first arrival there, which deeds, papers, &c., were written by the said Arnoldus de la Grange; and believes the names set down on said map are the writing of the said Arnoldus de la Grange.

The records at New Castle also show the words “in Delaware



river" and like expressions, to have meant no other than the land or territory as settled on, and not the soil in or under the waters of that stream, as before mentioned. A few extracts have been made, to verify this.

Book A, p. 2.  
New Castle Re-  
cords.

"Alexander D. Henyossa' in behalf of the Right Hon Lord Burgamaster of the city of Amsterdam, Govenor of *Delaware river*, together with the Council," &c.

Dated July 3d, 1664.

Book A, p. 4.  
New Castle Re-  
cords.

"Francis Lovelace Esq' one of the Gentlemen of her Majestys Honorable Chamber and Governor General under his Royal Highness James Duke of York and Albany \* \* \*  
To all to Whom these shall come, Greeting. \* \* \*

"To have and to hold the said parcel of land \* \* \*  
paying therefor yearly and every year as a quit rent unto his Royal Highness' use one bushel and a half of Winter Wheat when it shall be demanded by such officer or officers in authority as shall be impowered and established in *Delaware river* and parts adjacent to command and receive the same."

Dated February 26th, 1671.

Book A, p. 7.  
New Castle Re-  
cords.

"Know all men by these presents that I William Curren of *Delaware river* (Planter) have bargained and sold," &c.

Book A, p. 8.  
New Castle Re-  
cords.

"Situate and lying upon Whorekill in *Delaware Bay*."

Book A, p. 12.  
New Castle Re-  
cords.

"To all Christian people to whom these presents shall come. John Ogle of Christiana Creek in *Delaware River*, Planter, send Greeting," &c.

"Edmund Andross Esq \* \* \* Lieutenant  
Govenor unto his Royal Highness \* \* \* James  
Duke of Yorke. \* \* \*

Book A, p. 28.  
New Castle Re-  
cords.

"Whereas there was a Patent heretofore granted by Col Richard Nicholls his royal Highness Governor here unto Thomas Wollaston, John Ogle, John Hendricks and Harman Johnson for a certain piece or parcel of land lying and being in White Clay Kill near unto Christana Kill in *Delaware river* Bounded," &c.

"Given under my hand and sealed with the scale of the Province in New York the fifteenth day of January in the twenty seventh year of his Majestys reign Anno Domini 1675.

"E. ANDROSS.

"Recorded," &c.

Book A, p. 38. Francis Lovelace, Governor, &c., to Harman Reyners. Deed dated May 1st, 1671.

"Whereas there is a certain lott of land at New Castle *in Delaware river.*"

Book A, p. 39. George Oldfield and Patterualia Carr, executors of John Carr, to John Moll. Deed dated April 10th, 1676.

"Whereas the said Capt. John Carr by his deed and letter of attorney bearing date April 10th 1675 did give to the said Patterualia his wife all his right and tityle to all his real and personal estate lying and being *in the river Delaware.*"

Book A, p. 40.

"Hans Hanson (alias) Miller of Appoquinemin Creek *in Delaware river.*"

Book A, p. 41.

"I Benjamin Gamlly of Appoquinemin Creek *in Delaware river* (Planter)," &c.

Book A, p. 47.

"Hans Hansan alias Miller of Appoquinemin Creek *in Delaware river* Planter sendeth Greeting. Know ye that the said Hans Hanson for and in consideration of the sum of 400 Guilders Holland money &c insured by Hendrick Williams of the towne of New Castle *in Delaware,*" &c.

Book A, p. 67. Anthony Clove to Ephraim Harmans and Casperas Harmans. Deed dated February 16th, 1674.

"Whereas the late Commander John Carr *in Delaware river* then was granted unto Casperas Harmans a certain peece or parcel of land lying *in the said river* below New Amstel on the South side of Appoquinemin Creek situate and lying *in Delaware or*

*the South river* of the New Netherlands on the Western shore, the said piece of land, marshes \* \* being bounded and limited \* \* on the East syde itt is bounded with the River," &c.

All the early Dutch and Swedish records relating to the settlements on the river Delaware, disclose the fact that in describing the locality of a tract of land, the residence of an individual, or the situation of a Colony, the words "*in Delaware river*," "*in Delaware*," "*in the said river*," or such like words or sentences were used, with the same import and intended to express the same meaning as the words "lying on the Delaware river, and all the islands in said river, and *the said river and the soyle thereof*," &c., used in the deed of the Duke of York to William Penn (August 24th, 1682,) for the twelve-miles circle.

## OPINION.

IN THE THIRD CIRCUIT OF THE UNITED STATES FOR THE  
NEW JERSEY DISTRICT.

*John Den, ex. dem. Henry Gale, vs. Henry Bealing, Benjamin Cooper, John Jefferson, John Garner, John Corkrin, and William Long.*

In ejectment for three hundred acres of land, situate in the township of Lower Penn's Neck, in the county of Salem, and District of New Jersey, commonly called the Pea Patch.

The ejectment in this case was returned in the Term of October, 1833, and issue is joined.

The title of the plaintiff, (with which I am familiar,) is as follows:

King Charles II., by patent dated March 12th, 1663-4, for the consideration therein mentioned, did give and grant unto his brother James, Duke of York, his heirs and assigns, "all that part of the main land of New England, beginning at a certain place known by the name of St. Croix, next adjoining to New Scotland, in America, and from thence extending along the sea coast unto a certain place called Pettuaquine or Pemaquid, and so up the river thereof to the furthest head of the same, as it tendeth northward, and extending from thence to the river of Kennebecque, and so upward by the shortest course to the river of Canada northward. And also all that island or islands commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the west of Cape Cod, and the Narrow Higansetts, abutting upon the main land between the two rivers there called or known by the several names of Connecticut and Hudson's river, together also with the said river called Hudson's River, and all the lands from the west side of the Connecticut to the east side of Delaware Bay,

and also all those several islands called or known by the names of Martin's Vinyard and Nantukes or otherwise Nantukett, together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings, and fowlings, and all other royalties, profits, commodities and hereditaments to the said several islands, lands and premises belonging and appertaining, with their and every of their appurtenances, and all our estate, right, title, interest, benefit, advantage, claim and demand, of, in, and to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders, together with the yearly and other the rents, revenues and profits of all and singular the premises and of every part and parcel thereof, to have and hold all and singular the said lands, islands, hereditaments and premises, with their and every of their appurtenances hereby given or granted or hereinbefore mentioned to be given and granted, unto our deceased brother James, Duke of York, his heirs and assigns, forever." *Puterson's Laws of New Jersey, Appendix I., Grants and Concessions and Original Constitutions of New Jersey, by Aaron Leaming and Jacob Spicer, pp. 3 & 4.*

This patent also grants the powers of government, &c., *in extenso*, over the premises granted James, Duke of York, by deeds of lease bearing date June 23d, 1664, and release bearing date June 24th, 1664, and for the consideration therein mentioned, did grant, bargain, sell, release and confirm unto John, Lord Berkely, and Sir George Carteret, their heirs and assigns, forever, "all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's River, and back upon the west Delaware Bay or River, and extending southward to the main ocean as far as Cape May, at the mouth of the Delaware Bay, and to the northward as far as the northernmost branch of the said Bay or River of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's River, in forty-one degrees of latitude, which said tract of land is hereafter to be called by the name or names of New Cesarea or New Jersey, and also all rivers, mines, minerals, woods, fishings, hawkings, huntings, and fowlings, and all other royalties,

profits, commodities and hereditaments whatsoever to the said lands and premises belonging or in any wise appertaining, with their and every of their appurtenances, in as full and ample manner as the same is granted to the said Duke of York by the before recited Letters Patent, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to the same, or any part and parcel thereof, and reversion and reversions, remainder and remainders thereof." *Patterson's New Jersey Laws, Appendix 3, Leaming & Spicer 8, 9, &c.*

Under this deed John, Lord Berkely and Sir George Carteret entered into possession of the premises and colonized the State.

Up to the time of the grant and for some time after, New Jersey was in possession of the Dutch, who held New York and New Jersey under the title of New Netherland.

Colonel Richard Nicolls, Sir Robert Carr, and Samuel Meverick were sent out with a fleet to put the Duke of York in possession. Nicolls' commission bears date April 2d, 1664. *Proud's History of Pennsylvania, and Smith's History of New York, and Smith's History of New Jersey, passim.*

In September, 1664, the Dutch surrendered New York to Nichols, and on October 1st, 1664, New Castle and all the possessions of the Dutch and Swedes on Delaware Bay and River, to Sir Robert Carr, who entered the Delaware with his ships.

In the summer of 1665, Captain Philip Carteret, who was the first proprietary Governor of New Jersey, arrived with several settlers, who received grants from Berkeley and Carteret, and began the first English settlement of New Jersey.

In 1672, New York surrendered to the Dutch, who, under Commodores Cornelius Everye and Jacob Benkes, conquered the fort at New York.

The people of New Jersey sent deputies to New York and swore allegiance to the States General and the Prince of Orange, and the Governor of the Duke of York returned to England. *Leaming & Spicer 50.*

On the 9th of February, 1674, the treaty of peace between England and the States General was signed at Westminster, by which New York and New Jersey were restored to the English.

In order to remove all doubts as to the will of the Duke of York and his grantees, by reason of the conquest from and by



the Dutch, and cession made by the Dutch to the English by the treaty of the 9th of February, 1674, King Charles II., by letters patent dated June 29th, 1674, granted to the Duke of York the State of New Jersey, in the same manner and by the same description as he had previously granted the same. *Leaming & Spicer* 41.

Previous, however, to this patent, King Charles II., by letters dated June 13th, 1674, acknowledged the rights of the Proprietors of New Jersey and their powers of government. *Leaming & Spicer* 49.

On the 29th of July, 1674, the Duke of York, by deed of that date granted, &c., to Sir George Carteret, East New Jersey, in the same manner as before granted to John Lord Berkeley and Sir George Carteret. On the 18th of March, 1673, John Lord Berkeley conveyed his moiety of New Jersey to John Fenwick. *Leaming & Spicer* 64.

By deeds dated February 9th, 1674, and February 10th, 1674, Edward Byllinge, William Penn, Gawn Lawry and Nicholas Lucas became seized of John Fenwick's moiety. *Leaming & Spicer* 65.

By deed of division bearing date July 1st, 1676, New Jersey was divided into East and West New Jersey; East New Jersey being allotted to Sir George Carteret, and West New Jersey to Edward Byllinge, William Penn, Gawn Lawry, and Nicholas Lucas.

On the 7th of November, 1743, the Council of Proprietors of West Jersey, by warrant of that date, directed their Surveyor General to survey to Samuel Atkinson and wife six hundred acres of unappropriated land, anywhere in the Western division of New Jersey below the falls at Trenton.

April 6th, 1744, Samuel Atkinson and wife conveyed the whole of the said warrant to John Robbins, by deed of that date.

October 6th, 1784, Elias Robbins, eldest son and heir-at-law of John Robbins, conveyed to Edward Hall fifty-two and a half acres and half a tenth of said warrant.

August 7th, 1782, the council of Proprietors of West New Jersey, by warrant of that date, directed their Surveyor General to survey to Daniel Ellis 5,000 acres of unappropriated land anywhere in the Western division of New Jersey.

Daniel Ellis, by deed dated August 8th, 1783, conveyed to John Lawrence 600 acres of said warrant.

September 1st, 1784, John Lawrence conveyed to Clement Hall and Edward Hall 126 acres of said warrant.

By virtue of the above warrants, on the 8th of October, 1784, Edward Hall and Clement Hall caused a survey to be made on the island in the river Delaware, in the County of Salem, in New Jersey, called the Pea Patch, thus described: An island in the river Delaware, called the Pea Patch, situate in the county of Salem, about one mile west from Finn's Point, in Penn's Neck, and is about west of the mouth of Salem Creek, and a little above Reedy Point, also nearly southeast and by east from Hamburg, about two and a half miles, and about south one and a half point west from the Tile House, at New Castle, distant about four and a quarter miles, and bounded, &c., containing 178 acres of marsh land, bank and mud flats, and allowance for roads.

The survey was made by Elnathan Davis, a deputy surveyor of the Surveyor General, and the return is dated October 27th, 1784. On the 3d of November, 1784, it was approved by the Board of Proprietors and ordered to be recorded, and recorded accordingly.

This deduction of title is perfect, according to the laws of New Jersey, and vests in the said Edward Hall and Clement Hall all the title derived from the grant made by the King to the Duke of York in the premises in question.

Edward Hall and Clement Hall entered on the island at the time of the survey, and it was staked out, and they took possession as far as it was capable of possession.

The Pea Patch is an island which has arisen within memory. It appeared first about sixty or seventy years ago, and arose from the sinking of a vessel loaded with peas, and thus acquired its name. By gradual alluvians and deposits it has assumed its present state.

Shortly after the survey the Halls rented the island to one John Mugway for twelve dollars and fifty cents, or fifty muskrat skins per annum, and he paid rent for two years.

The Halls possessed the island during the lifetime of Clement Hall.

In December term, 1811, the administrators of Clement Hall applied to the Orphans' Court of the county of Salem for the sale of his real estate, and the said court decreed the Pea Patch to be sold.

The moiety of Clement Hall was sold accordingly, and purchased by Henry Gale for \$500; and on the 27th of February, 1813, the administrators of Clement Hall conveyed by deed to the said Henry Gale the one moiety of the Pea Patch.

On the 27th of February, 1813, Edward Hall and wife conveyed the other moiety of the Pea Patch to the said Henry Gale, by deed of that date.

Doctor Henry Gale went immediately into possession, cleared a fishery on the island, and occupied it during the fishing season for two years, and until he was expelled by force by the United States, who took possession under a grant from the State of Delaware.

No possession had ever been taken of this island until the United States forcibly entered, except by Dr. Gale, and those under whom he claimed. Neither the State of Delaware nor any other claiming under it or adverse to the New Jersey claim, had any possession of the island from its first formation until the United States entered.

This island lies ten or twelve chains nearer to the Jersey shore than to the Delaware shore; and the ship channel or main channel runs between the Pea Patch and the Delaware shore.

The State of New Jersey, by an act passed on the 24th of November, 1831, entitled "An Act vesting in Henry Gale, his heirs and assigns, all the right and title of the State of New Jersey of, in, and to an island called the Pea Patch, in the river Delaware, in the county of Salem and State of New Jersey," for the consideration therein mentioned, granted and conveyed all the right and title of the said State to the said Henry Gale, his heirs and assigns, forever, in as full and ample manner as the State hath right and title to grant and convey the same, reserving the right of jurisdiction and sovereignty. *Harrison's Compilation of New Jersey Laws* 366.

From the above deduction of title it is obvious, that if the grant made by the King to the Duke of York passed any interest in the river Delaware, it is now vested in Dr. Henry Gale. It may be justly argued that it passed by the terms of the grant, which are as comprehensive as can be well imagined.

The grant made by the King to the Duke of York was for the purpose of colonization. It is true that the western boundary is thus limited: "halting upon the west Delaware Bay or

River;" yet it is manifest that this is not designed to limit anything more than the extent of land, for the grant goes on to pass "all rivers, mines, fishings, royalties, commodities and profits whatsoever to the said lands and premises belonging or in any wise appertaining."

August 6th, 1680, the Duke of York, by deed of confirmation, reciting the different grants hereinbefore stated, confirms the moiety of Lord John Berkeley and others to William Penn and others, with all islands, bays, rivers, forts, waters, royalties, franchises and appurtenances whatsoever to the same belonging or in anywise appertaining, as also the free use of all bays, rivers and waters leading unto or lying between the said premises or any of them, in the said parts of America, for navigation, free trade, fishing, or otherwise, and also all the powers of government, as fully as they were granted by the King to the Duke of York; and also it is declared that the said several powers and authorities were given and granted to the Duke of York and his assigns by the King for the "planting, peopling, and improving" of the lands, places, and territories thereby granted, and for the transporting thither subjects, &c., as also for the defending, guarding, and keeping the same. *Leaming & Spicer* 412.

The Duke of York also, by deed of confirmation, dated March 14th, 1682, confirmed to the grantee of Sir George Carteret East Jersey in a similar manner. *Leaming & Spicer* 141.

On the 23d of November, 1683, King Charles II. confirmed these deeds. *Leaming & Spicer* 151.

New Jersey has always claimed and exercised jurisdiction over the Delaware Bay and River.

In 1679 and 1680, Sir Edmond Andros, the Governor of the Duke of York, of the Colony of New York, which was conveyed (*inter alia* with New Jersey) to the Duke by King Charles II., imposed a duty of ten per cent. upon all European goods imported in the Delaware, which was collected at the Hoar Kills or Lewistown. It was discontinued at the instance of the Proprietors of New Jersey, who in their remonstrance insist that they have a right to land anywhere in the Delaware Bay, as the bounds of the country they bought; that the right of colonizing was part of their bargain; that they bought the soil and right of government together, and that powers of government limited them to erect no policy contrary to the laws of England; and

that, with this restriction, they had the right of making laws for the good of the adventurer and planter; that if the Duke claims it by the *jure regale*, that power over the territory constituting New Jersey is vested in his alienees. *Smith's History of New Jersey* 116, &c.

In 1682, the Legislature of New Jersey resolved that the land and government of New Jersey were purchased together. *Smith's History of New Jersey* 163.

In 1676, in the concessions and agreements of the Proprietors, freeholders and inhabitants of West New Jersey, convenient portions of lands are granted for wharves, quays and harbors, and it is declared that all the inhabitants of West New Jersey have the liberty of fishing in Delaware river. *Leaming & Spicer* 390.

In 1681 the Commissioners chosen for settling and regulating lands within the province, prescribe that the surveyors shall measure the lands from St. Pink (Assanpink Creek at Trenton) and from thence down to Cape May, and that each proprietary should have their proportion of front to the Delaware river. *Leaming & Spicer* 436.

In 1683 the Assembly of New Jersey resolved that the Proprietary of Pennsylvania be treated with in reference to the rights and privileges of this province to or in the river Delaware. *Leaming & Spicer* 480.

On the 15th of April, 1702, the proprietors of East and West New Jersey surrendered the powers of Government to Queen Ann, which was accepted by the Queen on the 17th of April, 1702. *Leaming & Spicer* 614.

In the proposals made by the proprietors of New Jersey to the lords of the Council of Trade and Foreign Plantation (which is always considered part of the surrender,) the proprietors (*Leaming & Spicer* 617,) stipulate for the confirmation of the soil and lands of the province to the proprietors, and it is acceded to without objection. *Leaming & Spicer* 589, 594.

That the proprietors may be lords of the soil, and it is acceded to. *Leaming & Spicer* 590, 595.

And the council say that the rights accruing to the proprietors from the seas adjacent can not be well circumscribed.

As early as 1765, the Legislature of New Jersey passed an act regulating the fisheries in the river Delaware, and have continued to do so ever since. *Allison's New Jersey Laws* 279.

In April, 1783, New Jersey and Pennsylvania entered into an agreement respecting the islands and jurisdiction of the Delaware, from the station point to the circular boundary of the State of Delaware, adopting as the general principle, that the islands should belong to that State to which they lay nearest. *Patterson's New Jersey Laws* 57.

From a very early period the proprietors have passed surveys of islands in the river Delaware, and all the islands in the Delaware are held under survey, approved by the Council of Proprietors of West New Jersey.

There are few islands in the Delaware below the circular boundary of the State of Delaware.

Egg Island and Stipson's Island are the only ones now recollected, which lie nearest the Jersey shore, and they are both held under surveys on warrants issued by the Proprietors of New Jersey.

The several sand flats which have arisen, are also now held, where they lie nearest to the Jersey shore, under surveys on like warrants.

In 1693, the Assembly of New Jersey passed an act reciting that "the whalery in Delaware Bay has been in so great a measure invaded by strangers and foreigners, &c., and enacting that all persons now residing within the precincts of this province, or within the province of Pennsylvania, who shall kill or bring on shore any whale or whales, within Delaware Bay, or elsewhere within the boundaries of this government, to pay one-tenth of the oyl to the Governor." *Leaming & Spicer* 519.

On the 28th of November, 1822, the Legislature of New Jersey declared the ship channel to be the Delaware boundary of Salem, Cumberland, and Cape May counties.

On the 7th of November, 1820, the Legislature of New Jersey passed an act to appoint commissioners to meet commissioners to be appointed on the part of Delaware, to meet and conclude an agreement between New Jersey and Delaware, "defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeastwardly of the circular boundary between the States of Delaware and Pennsylvania." *Revised Laws* 794.

No commissioners were ever appointed by Delaware.

New Jersey made repeated efforts to induce Delaware to pass



similar laws regulating the fisheries in the river Delaware, but without success.

The State of New Jersey has, and for nearly fifty years has had, laws regulating the fisheries in the Delaware, which assert her jurisdiction, and regulate the exercise of the right of fishing in the whole extent of the Delaware River and Bay.

The right of the State of New Jersey to the island in question, it is supposed, may be defended upon the following principles; and if the island is within the jurisdiction of New Jersey, the claim of Dr. Gale cannot be well questioned:

*First.* By the grant to the Duke of York, the islands in the Delaware, nearest to the shore, did or did not pass. If they did pass, then there is an end to the question, for the Pea Patch lies on the Jersey side of the channel, and is twelve chains nearer to the shore of Jersey than Delaware.

It may be contended that it did pass by the express terms, "all the islands," &c.

1. The best expounder of the rights under those ancient and public grants, for colonization and government, is the occupation and enjoyment. For more than sixty years, New Jersey has exercised an adverse dominion, under a claim of right, over the waters of the Delaware. This will bind nations as well as individuals. *Vattel* 182, § 266-4.

2. By the terms of the grant, the Delaware is made the western boundary; it was granted expressly for colonization, and the powers of government were granted with the soil. Upon the purchase of so large a tract as New Jersey, bounded on its whole western border by the Delaware, it would be difficult to presume that any right in that river was excluded. It was essential to the purposes of the grant, and all presumption must be in its favor.

3. The claim and holding have always been to the middle of the Delaware. Usurpation and prescription are much more necessarily used between sovereign States than individuals. *Vattel* 254, § 147.

Prescription composes a title as firm and just as that of property itself, established and supported for the same reasons. *Vattel* 253, § 141-2.

The State of New Jersey always permitted the proprietors to grant the islands and subaqueous soil of the Delaware. Her

court sanctioned the right, and it has always been acquiesced in. Penn, while proprietor, and the State of Pennsylvania recognized that right.

*Secondly.* If the right to the Delaware did not pass to the proprietors, then it has never been granted. This is undoubtedly the better opinion.

In 1721, the Attorney and Solicitor General, Robert Raymond and Philip York, gave an official opinion to the Lords Commissioners of Trade and Plantations, on the question, whether, by the grant of Pennsylvania and New Jersey, the river Delaware passed; that, by the said grants, "no part of the river Delaware or the islands lying therein passed, but the right remained to the crown." 1 *Chalmers' Opinions*, p. 61.

This is also the opinion of Judge Washington, an opinion entitled to very great respect. *Peters' Circuit Court Reports*, p. 385-6, &c., *Corfield & Coryell*.

If it remained in the crown until the treaty of peace; it was extinguished by that treaty, in which the King acknowledged the several States to be sovereign and independent, not only as to Government, but as to the propriety and territorial rights of the same. The effect of the Revolution and treaty of peace was to extend the limits of New Jersey to the middle of the bay from its mouth upwards.

By the general law of nations, where a river lies between two States, and is not included within the bounds of either, each holds to the middle of the stream, and the island existing or rising in the river must be allotted to that State to which it is nearest. 5 *Wheat*, p. 359, &c.

I think the right of New Jersey is undeniable, if no adverse grant can be shown. None such can be shown, which has or ever had validity.

Delaware never was granted by the King, the only rightful grantor. If the question was *de novo*, I think that no doubt would exist that the grant under which the three lower counties of Delaware are held would be invalid. If it is good at all, it is because possession has ripened it into a title. But it can go no further than the possession goes.

Delaware is not claimed under the grant made by King

Charles II. to William Penn on the 4th of March, 1681; it is not included within the boundaries.

The only grants pretended are: 1. A deed of feoffment, August 24th, 1682, by the Duke of York to William Penn, for "all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles, about the same situate, lying and being upon the river Delaware, in America; and all islands in the said river Delaware and the said river and soil thereof, lying north of the southermost part of said circle of twelve miles about the town, together with all rents, services, royalties, franchizes, duties, jurisdictions, liberties, and privileges thereunto belonging." And the Duke of York, by deed of feoffment, dated August 24th, 1682, granted to William Penn "all that tract of land, upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and entering so to the Hoar Kills, otherwise called Cape Henlopen, together with the rivers, &c., situate in or belonging unto the limits and bounds aforesaid."

There is no doubt but the terms of these grants include the river Delaware.

The objection is, that the Duke of York had no title whatever to the premises granted. That could only be acquired by a grant from the King. None such was ever made, or can be produced.

It is true that Colonel Nichols, the Governor of New York, under the Duke of York, conquered Delaware from the Dutch; but that gave no title to the conquered land to the Duke; he was then a subject, and no principle is better settled than that all conquests made by a subject enure for the benefit of the crown.

This title by conquest would seem to be the one relied on by the Duke. This is confirmed by the mode of conveyance, *by deed of feoffment*, an extraordinary mode of conveying wild lands, &c., and best adapted to convey a possessory right.

It may be well doubted whether *subaqueous soil*, incapable of possession, as well as rights of jurisdiction, and other rights incapable of delivery, would pass by a deed of *feoffment*.

In October, 1717, Edward Northey and W. Thompson, At-

torney and Solicitor General, in their opinion to the Lords Commissioners of Trade and Plantations, deduce the title of William Penn of Delaware. It is manifest that they are not aware of any valid grant from the King. *Chalmers' Opinions*, p. 40 to 57.

Also, in 1721, Robert Raymond and Philip York are manifestly ignorant of any valid grant of the Delaware river; and it is hardly to be supposed, that not only the law officers of the crown, but the Lords Commissioners of Trade, &c., should be ignorant of so important a conveyance from the crown.

It is sufficient, however, to say, that no such grant can be produced. *Chalmers' Opinions*, p. 61.

These opinions of the law officers before referred to, render it certain that none was ever made.

Then there is no valid grant from the King to any person for the river Delaware, and the right arising from the Revolution and the treaty of peace, as well as the general laws of nations, allots to the contiguous States respectively the jurisdiction and propriety in the river to the middle of Delaware, from its mouth upwards.

In looking at the grant made by the Duke of York to William Penn, of New Castle and the twelve miles circle, it is obvious, that it would include a considerable portion of the county of Salem, the whole of the town of Salem, and several other places, then actually settled and inhabited under former grants, made by the Duke of York, under title derived from the King.

The several deeds of feoffment made by the Duke to William Penn being *void*, cannot be extended beyond what was actually possessed under it, and it must now be limited by that possession.

I am not aware that Delaware has ever asserted her claim to the waters of the Delaware, even to the channel, except in the cession made to the United States.

Even if there were doubts about the validity of the Delaware title, which I do not think is the case, yet I think the United States ought to compensate Dr. Gale.

When Delaware ceded the island to the United States, Dr. Gale was in possession, under a title valid, if within New Jersey. The United States received a conveyance from the State of Delaware when out of possession, and upon that title forcibly

ejected and dispossessed Dr. Gale, who was in possession under title derived from those who had been in possession peaceably and undisturbed, for thirty years, at least.

GARRET D. WALL,

*Att'y U. S. for the District of New Jersey.*

Burlington, June 9th, 1834.

## CHARGE OF THE COURT.

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IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NEW JERSEY.

*John Den, ex. dem. Henry Gale, v. Henry Bealing. In  
Ejectment.*

GARRET D. WALL, for plaintiff.

JAMES S. GREEN, for defendant.

BALDWIN, J. It is to be regretted, as a precedent, that the plaintiff should have been dispossessed of the property in controversy by a military force, and that no arrangement has been made for trying the title, or any mode provided by any act of Congress for making compensation, if the property belongs to the plaintiff. The government has an undoubted right to take private property for public use; but the obligation to make compensation is concomitant, as well by the principles of public law, as the fifth amendment to the Constitution of the United States, which provides that private property shall not be taken for public use without just compensation. If the right to the island is in the plaintiff, he had his remedy, if compensation was not made, but he has not pursued it; he brings this action to try the title, which must be decided by the settled rules of law which govern the actions of ejectment. It is therefore incumbent on him to show in himself a right of possession; not only better than the defendant, but good and perfect in itself, and better than any title in any other person, or the State of Delaware.

The possession which has been taken by the United States presents no objection to the trial of the right of possession; for



should the result be favorable to the plaintiff, the United States have it in their power to take a course which will prevent any public inconvenience by the settling of the title in the suit.

Both parties claim under a grant from a State: the plaintiff under a law of New Jersey of 1831; the defendant under a law of Delaware of 1813; the former ceding to the plaintiff the right of that State to this island; the latter ceding the right of Delaware to the United States. Both of these laws have been made the subject of comment by the opposing counsel; but without regard to their phraseology, or any technical consideration of their terms, each must be taken as the act of the State, operating as a grant of its right and title, according to the manifest intention and effect of the respective laws. In the examination of the title of the two States, we will first consider them as two independent States or nations, having the Delaware river as their common boundary.

By the law of nations, "when a nation takes possession of a country bounded by a river, she is considered as appropriating to herself the river also; consequently the nation that first established her dominion on one of the banks of the river, is considered as being the first possessor of all that part of the river which bounds her territory. When there is a question of a very broad river, the presumption admits not of a doubt, so far at least as relates to a part of the river's breadth, and the strength of the presumption increases or diminishes in an increased ratio with the breadth of the river. If that nation has made any use of the river, as for navigation or fishing, it is presumed, with the greater certainty, that she has resolved to appropriate the river to her own use.

"If, of two nations inhabiting the opposite banks of the river, neither party can prove that they themselves, or those whose rights they inherit, were the first settlers in those tracts, it is to be supposed that both nations came there at the same time, since neither of them can give any reason for claiming the preference; and in this case, the dominion of each will extend to the middle of the river. A long and undisputed possession establishes the right of nations."

Thus when, from time immemorial, a nation has, without

contradiction, exercised the sovereignty upon a river which forms the boundary, nobody can dispute with that nation the supreme dominion over the river in question. *Vatt., B. 1, ch. 22, §§ 1, 2, 3, 4, p. 120.* *Grot., B. 2, ch. 3, §§ 8 to 18, p. 162, 171.* *Puff., B. 4, ch. 5, § 3, p. 379.* The general rule cannot be so well expressed as in the words of the Supreme Court: "When a great river is the boundary between two nations or States, if the original property is in neither, and there can be no convention respecting it, each holds to the middle of the stream." 5 *Wh.* 379, *Handley's Lessee v. Anthony.*

Islands in a river belong, of course, to the proprietors of its bed.

By the middle of a river, you will understand, not merely a line equi-distant from each shore, but the main channel thereof, that part of the bed of the river over which there is the greatest depth of water in its general course or current; not the depth of any particular spot, but the general average depth of the channel, as indicating the main and usual route and line of navigation for large vessels.

When the river is of an equal depth, or spreads into a bay, in all parts of which the facilities of navigation are equal, the line of the States is one equally distant from the respective banks; in either case, where the main ship channel, or the measured distance is the boundary, islands are considered as parts of the river.

In applying the principles to the respective rights of Delaware and New Jersey to the Pea Patch, considering these States as two independent nations, settled on the opposite banks of the Delaware river and bay, your attention will be directed to the evidence in the cause.

There has been no compact or other agreement between the States touching their boundaries. Two surveyors have stated, as the result of actual measurement, that the Pea Patch is nearest the Jersey shore; a number of witnesses have testified that the main ship channel is between the Pea Patch and the Delaware shore. Some of them testify that, at the close of the Revolution, a vessel drawing only six feet water was grounded in the channel between the island and the Jersey shore. The evidence indeed is full and conclusive, both as to the main channel being on the western side of the island, and the island

being nearest the Jersey shore; so that no question remains except on the credibility of the witnesses. It is your exclusive province to decide these facts from all the evidence in the cause, in which there is no clashing or contradiction. Should you be of opinion with the plaintiff on these two facts, then the law of the case, in this view of it, is clear.

For all purposes and objects, not affected by the Constitution of the United States, these States are foreign to each other. 2 *Pet.* 591. They became free, sovereign, and independent States by their own declaration of independence, which placed them severally on an equal station with the other nations of the earth, before the treaty of peace with Great Britain, which was merely a recognition, and not a grant of their independence. 4 *Cr.* 212. The several States were allied sovereigns during the Revolution, connected by common action in a common cause; at first, without a written league, but afterwards, separate parties to articles of confederation, in which each State entered into a firm league in defence of their mutual freedom and sovereignty. 3 *Art. Conf.*, 1 *Laws United States* 14. They were also parties to a treaty of alliance with France, who guaranteed to them their separate sovereignty and possessions. 1 *Laws United States* 203. As States, they were each sovereign and completely independent, 3 *Wh.* 189, on whom all the rights of the crown of Great Britain devolved by the Revolution, as well as the transcendent power of Parliament. 4 *Wh.* 651; 8 *Wh.* 584. As a confederacy, the United States acquired nothing by the declaration of independence, or the treaty of peace. The boundaries of the United States were those of the several States. No territory was acquired that did not belong to some of the States, and none could be acquired by the confederacy within the boundaries of a State. Any acquisition at the expense of a State would have been a violation of the IIIrd article of the confederation, and the IIId and XIth articles of the treaty with France, as well as a fundamental principle of international law, resulting from this alliance of the States with each other, and each and all with France. One party to the alliance is not permitted to acquire territory during the war, to the dismemberment of another. Each State declared itself independent, according to the limits of her territory at the time of such declaration, as claimed by her, or as asserted by Congress

in the declaration of independence in behalf of all the States; and the soil and sovereignty within their acknowledged limits were as completely theirs on the 4th of July, 1776, or at their separate declarations of independence, as at this time. 12 *Wheat*. 525, &c. Though the people of New Jersey formed their constitution on the 3d of July, 1776, and the people of Delaware formed theirs in September following, the former acquired no priority of claim as to territorial boundary, or any other rights over Delaware; nor was there anything which occurred during their colonial condition, which could affect their relative sovereignty after they became States.

As Colonies, or rather Provinces, each was under a proprietary government; New Jersey by a direct grant from the King to the Duke of York, in 1664. The three lower counties were held under two deeds from the Duke of York to William Penn, in 1682, without any direct grant from the Crown. They were united under a common government with Pennsylvania in that year, and so continued till the Revolution. But, though the people of these counties had no charter from the King, as a Colony, or any separate government, they were always considered as a distinct political community or body politic, on the same footing as the other Colonies. As such, they were represented in the first Congress of the Revolution, in September, 1774, by delegates "from the government of the counties of New Castle, Kent, and Sussex, on the Delaware," (*vide Journals of Congress*, 1 and 2,) and in the succeeding Congress until the 4th of July, 1776, when the declaration of independence was signed by them as the representatives of the State of Delaware. She must then be taken to be a separate and sovereign State, on a footing of perfect equality with the other States, without regard to the precise time of her becoming so, and as succeeding to all the rights of the crown and government of Great Britain, as they existed at the Revolution in and over the Delaware river and bay, within her boundaries or claimed limits. Such is the effect of the declaration of independence and treaty of peace, as declared by the repeated and solemn decision of the Supreme Court; and the *United States* neither did or could acquire any territorial rights by the treaty of peace. The two States of Delaware and New Jersey must be considered as two foreign States or nations, having the Delaware as their common boundary. It follows that

*each held soil and sovereignty*, in full dominion, to the middle of the river, or the main channel thereof, from the time they became States, without any preference in either by possession, or by being first established on either bank. In this view of the case, the right of the Pea Patch depends on the facts as you shall find them. The law of nations assigns the right of property to the State nearest to whose shore it lies, or between whose shore and the main channel the island is situated. If you believe the witnesses, the plaintiff has made out his case in this view of it. But the nature of the case and the course of the argument makes it necessary to examine the title in other respects, in order to ascertain whether it must be decided on rules differing from those prescribed by the law of nations for ascertaining the boundaries of States. This leads us to an inquiry concerning the original grants by the crown of Great Britain, of New Jersey, to the Duke of York, and of those counties on the Delaware by the latter to William Penn. By the charter of the Duke of York, in 1664, the King granted him all the lands from the west side of the Connecticut river to the east side of the Delaware bay. In the same year the Duke of York, to Lords Berkley and Carteret, the land to the west of Long Island and Manhatis island, and "bounded on the east, part by the main sea and part by Hudson's river, and lieth upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware bay, and to the north as far as the northernmost branch of the said bay or river of Delaware," &c. *Patt. L., app. 1, iv.*

In construing these grants it must be remembered that before that from the King, he was the acknowledged sovereign of the whole territory on both sides of the Delaware; and though he granted soil and jurisdiction in full and absolute propriety, and established a proprietary government, yet it was with a defined boundary. So was the grant from the Duke to Berkley and Carteret. The proprietaries of New Jersey claiming by grant, therefore, were not on a footing with a State or nation claiming or settling a country on the bank of a river, who might extend their jurisdiction over its whole bed, unless they interfered with the rights of another State. This grant of the King severed from the royal dominion a described portion of territory, beyond the bounds of which neither the Duke or his grantees could make



any claims of rights, in opposition to the acknowledged sovereignty of the King, over what was ungranted. Any claims which the proprietaries of New Jersey could make, or any possession which they might take beyond their assigned boundary, could, in itself, give them no title. Hence it has been decided by this court, in *Corfield v. Coryell*, 4 Wash. 371, &c., and in *Bennett v. Boggs*, 1 Bald. 60, that the west boundary of West Jersey, according to the terms and construction of the grant, was the low water mark in the Delaware. In so doing, our predecessors, as well as we, have followed the rule established by the Supreme Court in *Handley's Lessee v. Anthony*. That case arose under the cession from the State of Virginia of the United States, of "all her right to the territory situate, lying, and being to the northwest of the river Ohio," which, by express stipulation, was to be laid off into independent States. Virginia had previously owned both sides of the Ohio, from Pennsylvania to its mouth; and it was held that the cession commenced at low water mark on the northwest side; that the river was the boundary between the States, not as in the case of two nations, each holding to the middle of the stream, "but when, as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its domain, and the newly created State extends to the river only; the river, however, is the boundary." 5 Wh. 379.

If any other ground were necessary to justify this construction of the grant of the crown, it will be found on its face to contain an express grant "of Hudson's river." Had it been intended to grant the Delaware, it would not have been limited to the eastern side of it. So far, then, as depended on the grant or charter of New Jersey, it extended only to the low water mark on the Delaware, which limited the right of soil and jurisdiction under the proprietary government, during its continuance, from 1664 till the surrender of the powers of government to the crown in 1702.

We now come to the title of Delaware by grant.

No patent or grant from the crown, for the three counties, has ever appeared; and, from the opinion of the crown lawyers, to whom the matter was referred, it would seem that none ever issued, at least not so far as to bind the King. *Chalmers* 40, 1. This territory then remained as part of the royal domain, not having been severed by actual grant. As it was not in the origi-



nal patent to the Duke of York, he could have no claim, by grant, beyond the east side of the Delaware. But the Duke made his deeds of feoffment on the 24th of August, 1682, to William Penn, comprehending the three counties.

By the first, he conveyed the "town of New Castle and all that tract of land lying within the circle or compass of twelve miles about the same," situate, &c., on the Delaware, "and all islands in the said river Delaware, and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town." "To have and to hold the said town and circle of twelve miles of land about the same islands," and all the premises, and with covenant for further assurance thereof, &c. Appointing, also, attorneys to take possession and seisin of the premises, and deliver them to William Penn, &c.

By the second deed, the Duke, in like manner, conveyed to William Penn all that tract of land on the Delaware, beginning twelve miles south of New Castle, extending to Cape Henlopen, with the free use and passage into and out of all bays, rivers, isles, and inlets, together with the soil, &c., isles, rivers, &c., situate in, or belonging unto, the limits and bounds aforesaid. 1 *Laws of Delaware*, App. 1, 4. This deed contained also a covenant of further assurance, and a power of attorney to certain persons therein named, to take and deliver possession and seizin. Neither deed contains any recital of a patent or grant from the King to the Duke, though in the grant from the Duke, of New Jersey, to Lord Carteret and Berkeley, the patent to the Duke is recited. Both deeds contain a grant of seignories and royalties, the effect of which was to grant not only the soil, but the rights of a proprietary as to jurisdiction and government, yet no authority for such a grant is referred to. We find however, by an authentic document, the act of union between the three counties and William Penn, annexing them to the province of Pennsylvania, dated 7th December, 1682, the nature of the title which the Duke claimed and conveyed, set forth in the preamble and recitals.

The country was in possession of the Dutch, who purchased it from the natives. The Dutch surrendered it, upon articles of peace, to the King's Lieutenant-Governor, Colonel Nicolls, and afterwards to Sir Samuel Andross, Lieutenant-Governor to the

Duke, "and hath by him been quietly possessed and enjoyed."  
1 *Laws of Delaware*, App. 8.

It thus appears that the Duke claimed this territory in right of conquest, and held it as an appendage to the government of New York, which was then in him. He had also claimed part of Pennsylvania by the same right, but had released it to William Penn before the act of union as therein recited. *Vide* 1 *Proud's Hist. Pa.* 122, 124, 135, 200, 206.

Two questions arise on these deeds—1st. Whether they pass any title; 2d. Their construction as to boundaries.

It is a settled principle of the British Government, that a subject cannot acquire territory to himself by the right of conquest. All acquisitions so made accrue to the crown. *Chalmers* 69. No subject can create or erect a seignory or proprietary government, unless he held them by a grant of these franchises from the King. A royalty, a seignory, or propriety, can be held only by act of Parliament, letters patent, or prescription. 4 *Com. Dig.* 454, *D.* 1; *Davis. Rep.* 165, &c.

These would be fatal objections to the operation of the deeds of the Duke of York, to pass either the right of soil or jurisdiction to William Penn, if the title to either depended alone on those deeds; but as there are other considerations which bear on them, and will be stated hereafter, we will proceed to the construction of these deeds, assuming their validity. The same rules of construction apply to treaties of cession, grants by governments by letters patent, as to deeds of individuals, 6 *Pet.* 638, and these deeds must not be so construed as not to come in conflict with a prior grant of New Jersey to the Duke, or by him to Berkely and Carteret, for a government is never presumed to grant the same thing twice.

The deeds must be taken according to the right and claim in which they were made, so as not to embrace territory which was not acquired from the Dutch, nor to authorize the exercise of any power in the government of New York, over any part of New Jersey, which had been denied by the solemn declaration of the Duke of York in 1672, (*Leam. & Sp.* 31, 2, 6,) and by the King in the same year, recognizing and confirming the absolute rights of Berkeley and Carteret as proprietors of New Jersey. *Leam. & Sp.* 39, 49.

No part of the province was therefore embraced, nor could it

pass by those deeds to William Penn, as it had been before granted by the former grantor, and as they contained no recital of a grant by the King to the Duke, they shall not be taken by implication to embrace any part of what the King had granted. As both deeds were executed at the same time, and for contiguous territory, they ought to be construed alike, if the words will permit; they must also be taken in relation to the parties to the grant, its object and the subject of the grant. The Duke was the grantor of two proprietary territories, on the opposite banks of the Delaware; after the division of New Jersey between Lords Berkley and Carteret, the latter, to whom the west part was allotted, conveyed it to William Penn and others in trust. *Lcam. & Sp.* 65, 7, 70.

In 1682 William Penn was proprietary of the three counties in his own right, and joint proprietor of West New Jersey in trust. He could therefore acquire no right in New Jersey in relation to his trust, or to the injury of his *cestui que trust*. To construe the deeds so as to do this, would be contrary to all rules of law; as derogatory to the honor and integrity of the Duke, in granting what he had before confirmed, and Penn in accepting, for his own use, a grant of any part of what he held in trust for another. Besides, the main consideration of the deeds of feoffment was to reward William Penn for the services of his father, which could not be done by granting him that which belonged to the proprietors of New Jersey.

From these considerations an obvious rule of construction arises; the deeds to Penn must be construed strictly against the Duke, favorably to the elder grantee, under him, and strictly against the younger grantee; so that they shall not be held to grant the same thing twice. *Vide 6 Pet.* 6, 38, &c., for the rules of construing public grants.

We will now consider the two deeds thus construed.

There are three points in the first deed: one in New Castle, (*Vide 1 Vesey* 450) one on the Delaware, twelve miles north; the other on the Delaware, twelve miles south; but it does not purport to extend across the river, or to embrace any part of New Jersey within the circle, or, if it did, the grant would be so far void, for the reasons before given. It is of a "tract of land" lying on the Delaware, the bounds of which must be on the bank, and not in the river, following the process of the circle.

That this is the meaning of the deed is evident from the boundaries of the second deed, granting "that tract of land upon Delaware river and bay, beginning twelve miles south from the town of New Castle." We have, then, no difficulty in ascertaining the *land* that was granted to be that which lay on the river between the two points, each twelve miles distant from a common<sup>d</sup> circle in New Castle; and from such centre twelve miles back from the river towards Pennsylvania and Maryland, and no other, nor beyond the low water mark on the river. Then follows the grant of "all islands in the said river Delaware, and the said river and soil thereof, lying north of the southernmost part of the said circle twelve miles, about the said town. The habendum is of the said town and circle of twelve miles of land about the same, islands and all other, the premises granted or intended to be, &c.;" and the same clause is in the covenant for further assurance, omitting the grant of the river, otherwise than as it may be included as part of the premises granted or intended to be granted. A reference to the second deed will tend to ascertain the meaning of the first; there is no grant of any part of the river, or any island below the beginning point of the second tract; a grant of the use of the harbors, waters, &c., belonging to the river and bay, precludes any construction which would make the deed pass the river, bay, or its waters, beyond the low water line. No word or expression is in it which could be made to include anything else; the grant is of the free "use and passage into and out of all harbors, bays, waters, rivers, isles, and inlets, belonging to, or leading to, the same." *Delaware River and Bay*. Now it would be a singular construction of the two deeds, to hold them to make the east boundary of the entire grant, the radius of a circle extending from the north and south points of the first grant, across the Delaware in the water to the Jersey shore, and south to Cape Henlopen, only to low water line. We think the deeds are not to be so taken, and that the utmost latitude which can be given to the first, is, to include only such islands and such parts of the river, as lie between a direct line drawn from the north and south points where the circle strikes the Delaware, and on its western bank. Taking the granting part of the deed, with the habendum and the covenant for further assurance, it would admit of a still narrower construction. By

omitting the river in the two latter clauses, which specially mentioned the main land and the islands, it might be fairly inferred that the grant was intended to cover no more, so as to make it conform to the second grant, below the twelve mile point, the grant of New Jersey to Berkley and Carteret, and of Pennsylvania to William Penn, all of which were limited by the Delaware as the boundary. Or, if that construction would be too strict, we would be clearly of the opinion that the grant of "the river and the soil thereof" would not extend beyond its main channel, according to the course of the river opposite its western bank, between the two twelve mile points, north and south of New Castle, upon the shore of the river. On this or any other view of the deeds of 1682, we think that they did not embrace that part of the river in which the island in question is situated. From the traditionary evidence in the cause, you will probably concur with us in opinion that there was no island there at that time, or for a long time thereafter; of this fact you will judge. If the island has arisen since 1682, it did not pass by the [grant] of islands in the Delaware; if the site of it was then connected with the Jersey shore, by a bar or sand bank, as has been contended for by the plaintiff's counsel, then, if it was bare at low water, it belongs to New Jersey. *Id*e 5 *W*h. 375. From the evidence as to the encroachment on the Jersey shore, opposite to where the island now is, you will decide on this fact. If, on the other hand, the site of the island has been always covered with water, we think it did not pass by the deed, unless you find it to have been, in 1682, west of the main channel of the river, but that the right to that part of the river remained in the King, as an ungranted part of his domain. You will then consider that if the place where the island now is was, in 1664, bare at low water, it passed to Berkley and Carteret by the grant to them of New Jersey by the Duke of York; if it remained always under water, it belonged neither to the Duke, Berkley and Carteret, or William Penn, by virtue of any title derived by the King's patent to the Duke, or his deeds to Penn, but that the right remained in the crown.

We have stated to you that, in strictness, no title passed by the deeds of the Duke, because, being a subject of the King, any territory acquired by conquest by the Governors of New York, became the domain of the crown, which the Duke could no



grant, nor could he create a proprietary government by his own authority. But though originally the title was not valid, it became so by the subsequent acquiescence of the crown in the long possession of the territory by William Penn, and the exercise of the powers of government from 1682 till the Revolution, as well as by various acts of the crown, recognizing the existence of a proprietary government, under the deeds of the Duke of York. It was held so long ago as 1750, by Lord Hardwicke, in the great case of *Penn v. Baltimore*, that the title of William Penn to the three lower counties was good by the possession of the Penns, and by their being permitted to appoint Governors over them which have been appointed by the crown. Long possession and enjoyment, peopling and settling counties, is one of the best evidences of title to lands, or districts of lands, in America, that can be. Those persons, therefore, who make these settlements, ought to be protected in their possession as far as law and equity can. 1 *C. S.* 453, 454. This protection is afforded by the presumption of law that a long, quiet possession either of land or a franchise, began with a grant. This is what we call, in law, a title of prescription, not because it is believed that a grant ever in fact existed, but because the law will presume it, and not require any proof of the fact, or suffer it to be questioned. A direct grant of land in a royal haven may be presumed to have been made by the King, after sixty years uninterrupted possession, and whatever may be held by grant may be held by prescription, even against the crown. As to the three lower counties there is every evidence, short of the sign-manual of the King to letters patent, that the title was lawfully in William Penn and his heirs. You will, therefore, take it as proved that the King had approved and confirmed the deeds of 1682, after a possession of ninety-four years, to the time of the Revolution. The title became as good as the King could make it. 9 *Pet.* 760. But there is a difference between a title by prescription, or a grant presumed from long possession, and one derived by grant produced in evidence before you; in the latter case the extent of the grant and its boundaries are defined, whereas in the former they depend on the claim and possession. Prescription can only apply so far as a possession has been had under claim and color of title, or acts of ownership or jurisdiction has been exercised. The presumed grant will cover all that has been quietly enjoyed, for such time



as suffices to raise the presumption, but the notice of a title by prescription necessarily limits it to what has been possessed, or claimed by right or color of title.

In reviewing the evidence of the case, we do not find any possession or claim of right, by the Penns or the State of Delaware, to this island, nor is there to be found in the legislation of Pennsylvania, during the union of the Province with the three counties, or by the State of Delaware since the separation, any right asserted, or any jurisdiction assumed or exercised over it, until 1813, when she made the cession to the United States. It is, therefore, not a case where her title can be held good by prescription, or presumed grant against the King; it must rest on the acts of approbation and confirmation by the crown, which gave the same effect to the deeds of the Duke of York as if they had been made under letters patent to him by the same boundaries. Assuming the title to be perfect—assuming also that it extended to that part of the river in which the island is situated, which is the strongest case Delaware can make—we proceed to the third view of the case, which is this:

Taking the long enjoyment of the rights of soil and government in the three lower counties as conclusive evidence of a grant or confirmation by letters patent from the crown, then the proprietaries of New Jersey and William Penn, by their respective deeds from the Duke of York, stood on an equal footing before the Revolution. Each is deemed to be in the actual legal possession, and to have the legal seizin of the subject matter of the grant, according to their respective boundaries, unless so far as the other may have taken and continued an adverse possession. 6 *Pct.* 743.

By an adverse possession is to be understood the exercise of acts of ownership in the soil, or the propriety right of jurisdiction and government, by one proprietary within the boundaries of the other, under the assertion of a right or color of title in himself to the place in controversy, as a part of his own territory or propriety. When there arises such a case the actual possession of land, or the undisputed exercise of the right of property by granting it, or of jurisdiction by acts of legislation, affecting it for a great length of time, the principle of prescription applies between two proprietaries, by which it will be presumed that an uninterrupted enjoyment of a right of property or government was founded on an original grant or a confirmation.

It is on this principle alone that the title of the Duke of York and of William Penn, to the lower counties, can vest, in opposition to the original right of the crown. The same principle must also apply to the proprietaries of New Jersey, if they can show a similar foundation for the prescription of a grant from the crown, or a confirmation to the extent of their possession or exercise of jurisdiction over the Delaware or the islands in it. It is also a settled principle of the law of nations that prescription applies between State and State, nation and nation, when the possession of territory, or the enjoyment of rights of sovereignty, has been long quiet and unquestioned. *Vattel* 121; *Grot.* 174, 180; *Puff.* 449. When a question of this kind arises between nations, the presumption is that ancient possession has been according to the original boundaries between them, or by some convention mutually made, not the presumption of a grant from one to the other, as that would imply an original exclusive right, which must be held derivatively. As to two proprietary governments separated by a large river, prescription applies in favor of each against the crown, the common grantor under whom they both hold; and between each other it applies as between two nations, for neither proprietary claims from the other or acknowledges any original right to what the one claims to have ever been in the other, so as to make it a subject of grant or confirmation, in any way, but by a grant to himself from the crown.

We now come to the application of these principles, to the claims of the proprietaries of New Jersey to islands in the Delaware, and the exercise of the powers of government on that river.

It appears, that from 1739, at least, islands in the Delaware have been surveyed under West Jersey proprietary warrants, and held by that title to the present day; so that there has been an uninterrupted exercise and enjoyment of a right of property by the proprietaries for the ninety-seven years. The government of the province has been in the crown from 1702, so that these surveys and possessions taken under them, were acts of notoriety, presumed to be within the knowledge of the local Governors, who were the immediate representatives of the crown; and as the right was not contested, it would have been good by prescription, if the royal government had continued for sixty-years from the time of the survey; but as the State of New Jersey succeeded to the rights of the crown, without ever ques-

tioning the right of the proprietaries to grant islands, every presumption that could be made in their favor against the crown, applies to the State as its successor, by the declaration of independence, or in virtue of the treaty of peace, by the relinquishment of the King. It is also a matter of judicial history and knowledge, that the riparian owners of land on the Delaware have, from time immemorial, enjoyed the rights of fishery opposite their shores, which has been transmitted and conveyed as property, and is so recognized by the compact between New Jersey and Pennsylvania in 1783.

Various laws have also been referred to, regulating the right of fishing in the Delaware, which are direct and unequivocal claims and assertions of right; and what gives them a greater weight is, that they are the acts of a royal government over the province, whose boundaries must be presumed to be co-extensive with the exercise of legislative power. The King is, of course, presumed to have ratified and confirmed the acts of his Governor.

The Penns also granted islands in the Delaware, opposite and near the Pennsylvania shore; always exercised jurisdiction on the river; and claimed those islands to the middle of the river, which rights were asserted before the King in counsel, with success. 12 *S. & R.* 209-10.

So far, then, as respects the rights of the crown to any islands in the Delaware before the Revolution, or of the State of New Jersey since, they must be taken to be in the proprietaries by prescription, and the right of jurisdiction under the royal and State government, to have been exercised by claim and color of right to the middle of the river, and therefore, as valid as if the King had granted, by letters patent, both soil and sovereignty.

By the same principles, the rights of the proprietaries in and over the three lower counties are perfect to the extent of any possession or exercise of jurisdiction or acts of legislation, which are the foundation for the presumption from prescription against the crown. But as there is no evidence that William Penn or his successor ever made any claim to the island in question, or exercise any jurisdiction in or over the Delaware, beyond the middle thereof, or the main channel, they can have had no rights by prescription. And admitting that, by the first deed from the Duke of York, this island would be within the twelve mile circle, the adverse claim of the proprietaries of New Jersey and

the exercise of jurisdiction to the middle of the river, would bar the right of the Penns by prescription, whether they are considered as private persons, or as proprietary government. As individuals, the Penns could claim no exemption from the effects of time running on a long and uninterrupted possession without an adverse possession or claim, by themselves; as a government, they must submit to the rule which prevails among the States, that peaceable possession is evidence of original or agreed boundary. Thus the matter stood between the two proprietaries, till New Jersey and three lower counties assumed the position and rights of independent States; the one abolished the royal, the other the proprietary government; yet neither interfered with the proprietary right of soil within their limits, so that the only change effected was of government. This left the jurisdiction over the Delaware and its islands a matter between the two States. The right of property in the island still remained a question, if at all, only one between the two proprietaries, until one of the States would assume the right to the proprietary in their sovereign capacity.

From the 4th of July, 1776, the rights of soil and jurisdiction became separated, so that from that time the proprietaries were private owners of the land, against whom time would run in favor of adverse possession by an individual; it was no longer a question between a proprietary and the King, or proprietary against proprietary, each being a government. There was no longer a propriety that could not exist in a State. The name of proprietary might be retained, but he could be viewed in no other light than any other great owner of land, who has the legal seizin and possession to the extent of his title, till he is disseized by an adverse possession, from which time a limitation begins to run on his right.

In the year 1784 this island was surveyed for Edward and Clement Hall, on a West Jersey proprietary warrant, under which it was held until their title became vested in the plaintiff, from this time he stood in place of the West Jersey proprietors, entitled to all their rights by prescription against the crown, against the Penns and the State of New Jersey, and, in his own right, by his possession, such as it was, entitled to the benefit of any limitation which had begun or commenced running from the date of the survey. As there was no adverse possession or claim, his legal seizin or possession continued till his dispossession.

sion by the United States in 1815, a period of 31 years, which would bar the right of entry of any adverse claimant; and, connected with the general claim of the proprietaries of New Jersey to the islands in the Delaware from 1739, would make the title good by a prescription of, 74 years' quiet enjoyment, adverse to any right under the deeds of the Duke of York to William Penn.

On her becoming a State, Delaware had an election to consider herself as succeeding to the rights of the proprietaries of the three counties, and standing in their place, as to all their former rights of soil, in virtue of the deeds of the Duke of York, in which case she would have been entitled to all presumptions founded on prescription against the crown, to the same extent that the Penns were, or Delaware might claim, as succeeding to all the rights of the crown, as devolved on her by the Revolution; and, repudiating the deeds of the Duke as usurpation on the acknowledged prerogative of the King, elect to hold the lands of the proprietaries in the original right of the crown. Such election, however, was not made till 18 years after the declaration of independence, when, by a law of Delaware, passed in 1794, it was declared "that the soil and lands, within the limits of the State, became the right and property of the citizens thereof," by the treaty of peace, by which the King relinquished all proprietary and territorial rights for the "sole use and benefit of the citizens;" and "that the claims of the late and former pretended proprietaries of this State to the soil and lands contained within the same, are not founded either in law or equity." 2 *Laws Del.* 1174-5. This solemn repudiation of any claim under the deeds to Penn, and the express claim asserted by the relinquishment of the crown as the source of the title of the State, to the unappropriated lands within their boundaries, precludes the State from claiming any benefit, by prescription, from the long possession of soil and government by the Penns, from 1682 to 1776, or by the deeds of the Duke of York; and as the State asserts title by the treaty of peace, as a cession by the King, she can have no better right than the King had at the time of the treaty or before; if time had so run on his right, that he would have been presumed to have given a patent of grant or confirmation for any lands or of any proprietary or territorial rights, the bar would operate as well against the State as



the King, under whom the State held. Had Delaware claimed to hold by the right of Penn, there is sufficient evidence in the cause to presume a right in the New Jersey proprietaries by prescription, to the island in question as against them. In such case Delaware must have claimed, subject to such right, had she claimed the lands in the State as her own; without declaring by what title, she could have rested on any which could be produced.

Having, however, abjured any others than the title of the Crown, she must rest upon that in support of the right which she ceded to the United States by the act of 1813; that the title is not valid, because the principle of prescription had previously made good the title of the New Jersey proprietaries under the patent of the Duke of York, according to their possession or claim under or by color thereof.

Another principle is also decisive against the right of Delaware: Assuming that no right existed in the Jersey proprietaries beyond low water mark in the Delaware, and that the survey of this island in 1784 was void, then, Delaware having renounced any title under the deeds of Penn, the two States, by their declaration of independence, stood on equal footing as each invested with the rights of the King to all that part of the Delaware and its islands which he had not granted. Their respective rights would extend to the middle of the river, or its main channel; the consequence is, that if this island was nearest the Jersey shore, or east of the main channel, it belonged to New Jersey as a State; her title passed to the plaintiff by the act of 1831, ceding the right of the State to him. Unless, therefore, you have difficulty in ascertaining where the main channel of the Delaware is, or nearest which shore the island lies, your verdict ought to be for the plaintiff.



The following letters, from James S. Green, Attorney of Defendant, relating to the trial of *Gale v. Bealing*, appear in the report of J. R. Poinsett, Secretary of War, to the United States Senate, relating to the said matter. The report is dated January 27th, 1838, 25th Congress, 2d session.

PRINCETON, November 23d, 1836.

SIR:—The case of *John Den, ex. dem. Henry Gale v. Henry Bealing*, tenant in possession, involving the question of title to the island called the Pea Patch, in the river Delaware, was tried last week, before the Circuit Court of the United States for the District of New Jersey. The trial occupied three days, and has resulted in a verdict for the lessor of the plaintiff. The plaintiff proved every fact, and produced every document and paper named in the brief of General Wall, under date of June 9th, 1834, and which has been printed (Rep. No. 92). On the part of the defendant, the act of the Legislature of Delaware, of May 27th, 1813, the deed of feoffment from the Duke of York to William Penn, Anno Domini 1682, the act of Union, and the act of settlement between the three counties and the province of Pennsylvania, were all produced and read in evidence. The subject was fully and elaborately discussed, and Judge Baldwin delivered a clear, impartial, and satisfactory charge to the jury. I am not aware that anything more could have been done. Exception to the charge of the Judge was noted, so that the case may be reviewed before the Supreme Court, if thought advisable.

It has cost me much time and labor to investigate the history and law of the case, as well as to try it, and it appears to me that I have a fair claim upon the Government for compensation for extra services. Be pleased to indicate your opinion on this point, and I will forward the amount of the charge.

With very great respect, your obedient servant,

JAS. S. GREEN,

Attorney of the United States, New Jersey District.

The Hon. B. F. BUTLER,

Acting Secretary of War.

PRINCETON, January 28th, 1837.

SIR:—In answer to your favor of the 25th instant, which I have just received, I enclose a copy of the affidavits read in evidence on the trial of the Pea Patch island case. Several other witnesses were examined, but established no new point. The plaintiff further offered and read in evidence the several deeds and other documents named in the printed abstract of Mr. Wall, beginning with page 11 and ending with page 19, which I also enclose. On the part of the defendant, was offered and received in evidence the deed of feoffment from the Duke of York to William Penn, dated 1682, of New Castle and the twelve miles circle. This may be found in the first volume of the first edition of the Laws of Delaware. Also was offered and received in evidence, "An act of Union for annexing and uniting of the counties of New Castle, Jones, and Hoarkills, alias New Dale, to the province of Pennsylvania, and of naturalization of all foreigners in the said province and counties annexed." This act may be found in the 21th page of appendix, in the 1st volume of the Laws of Pennsylvania, by Dallas.

I have no copy of the charge of the Court, but no doubt Judge Baldwin, who is now at Washington, will furnish a copy.

With the papers enclosed, and a copy of the Judge's charge, the Secretary of War can ascertain whether an appeal is necessary.

Very respectfully, your obedient servant,

JAS. S. GREEN,  
Attorney U. S., N. J. District.

Gen. C. GRATIOT,  
Engineer Department, Washington City.

DUKE OF YORKE }  
GR<sup>t</sup> }

**PUBLIC RECORD OFFICE COPY.**

Signet Office Docquett Book 35 Charles the Second. 1683.  
April.

Aprill 1683 Annog r Rs Caroli secundi tricesimo quinto.

Upon a surrend' made to his Maty by his Royall Highnesse James Duke of Yorke of certaine Lres patents bearing date y<sup>e</sup> 22<sup>th</sup> day of March last past granting unto him all that towne of Newcastle otherwise called Delaware and fort thereunto belonging lying between Maryland and New Jersey in Ameriea and severall other lands tenem<sup>ts</sup> & hereditam<sup>ts</sup> therein meneoned His Mat<sup>y</sup> is hercby pleased to grant unto the s<sup>d</sup> James Duke of Yorke All that towne of Newcastle otherwise called Delaware and fort thereunto belonging lying between Maryland and New Jersey in America And all that river called Delaware and soyle thereof and all islands in the s<sup>d</sup> river and all that tract of land upon the west side of the river and bay of Delaware w<sup>ch</sup> lyeth from Skoolkill Creeke upon the s<sup>d</sup> river unto Bombeyes Hook and backwards into the woods soe farr as the Minquas County and from Bombeyes Hooke on the said river and bay unto the cape Henlopen now called Cape James being the south point of Asea Warmett Inlett and backwards into the woods three Indians dayes journeys together with all the lands islands soyle rivers harbours mines mineralls quarries woods marshes waters lakes fishings lawkings huntings and fowlings and all other royalties profitts comodities and hereditam<sup>ts</sup> to the said towne fort tract of land and p'mises belonging to hold to the s<sup>d</sup> Duke and his heires for ever paying therefore yearly one bever skinn and such other clauses powers and authorities are inserted as were directed by warr<sup>t</sup> und' his Ma<sup>ty</sup> Royall Signe Manuall.

Subsc'd by M<sup>r</sup> Attor<sup>y</sup> Gen<sup>ll</sup> and p'cur by the Earle of Sund'-land.

I certify that the foregoing is a true and authentie copy.

WILLIAM HARDY,  
*Assistant Keeper of Public Records.*

September 12th, 1873.

## PUBLIC RECORD OFFICE COPY.

Signet Bills of the 35<sup>th</sup> year of Charles the Second. 1683.  
April.

Carolus R

Charles the second &c. To all to whom these p'sents shall come greeting Whereas Our dearest brother James Duke of Yorke hath surrendered unto us certaine L's Patents bearing date the two and twentieth day of March now last past whereby Wee did grant unto him all that towne of Newcastle otherwise called Delaware & Fort thereunto belonging lying betweene Maryland & New Jersey in America and severall other Lands tenem<sup>ts</sup> and hereditam<sup>ts</sup> therein mencioned which surrender wee have accepted and by these p'sents doe accept Know yee that wee for divers good Causes and consideracons us thereunto moving Of our especiall grace certaine knowledge and meere mocon Have given and granted and by these p'sents for Us Our heires and Successors doe give and grant unto our dearest Brother James Duke of Yorke his heirs and assignes All that the Towne of New Castle otherwise called Dallaware and Fort therein or thereunto belonging situate lyeing and being betweene Maryland and New Jersey in America And all that River called Delaware and soyle thereof And all Islands in the said River And all that Tract of Land upon the West side of the River and Bay of Delaware which lyeth from Skoolkill Creeke upon the said River unto Bombeys hook and backwards into the woods soe far as the Minqua's Country and from Bombeys Hook on the said River and Bay unto Cape Henlopen now called Cape James being the South point of Asca Warmett Inlett and backwards into the woods Three Indians dayes Journeys being formerly the Claime or possion of the Dutch (or purchased by them of the Natives) or which was by them first surrendered unto our Lievetenant Governour Colonel Nicholls, and which hath since been surrendered unto S<sup>r</sup> Edmund Andross Lievetenant Governor to our said dearest Brother James Duke of Yorke and hath for severall yeares been in his possion with the free use and continuance in

and passage into and out of all and singular Ports Harbours Bayes Rivers Isles and Inletts belonging unto or leading to or from the said Tract of Land or any part or parcell thereof And the Seas Bayes and Rivers and soyle thereof bounding Eastward and Southward on the said Tract of Land And all Islands therein And alsoe all the soyle lands Feilds Woods Underwoods Mountaines Hills Fenns Swamps Isles Lakes Rivers Riveletts Bayes and Inlets situate or being within the said Tract of Land and any of the limitts and bounds aforesaid Together with all mines Mineralls Quarryes Fishings Hawkings Huntings and Fowlings and all other Royalties priviledges profitts comodities and hereditaments to the said Towne Fort Tract of Land and p'misses or to any or either of them belonging or apperteyning with theire and every of theire appurtenances scituate lyeing and being in America And all our Estate right title Interest benefit advantage claime and demand whatsoever of in or to the said Towne Fort Tract of Land and p'misses or any part or parcell thereof And the Revercon and Revercons Remainder and Remainders thereof Together with the yearely and other Rents Revenues and profitts of the p'misses and of every part and parcell thereof To have and to hold the said Towne of Newcastle otherwise called Delaware and Fort Tract of Land And all and singular other the p'misses with theire and every of theire appurtenances hereby given and granted or hereinbefore menconed to bee given and granted unto our said dearest Brother James Duke of York his heires and assignes for ever To be holden of Us our heires and successors as of our Mannor of East Greenwich in our County of Kent in Free and Comon Socceage and not in Capite or by Knightservice Yeilding and rendring and the said James Duke of Yorke for himself & his heires and assignes doth covenant and promise to yeild and render unto Us our heires and Successors of and for the same yearely and every Yeare one Beaver skynn when the same shall bee demanded or within Ninety dayes after such demand made And wee doe further of our especiall Grace certain knowledge and meere mocon for Us our heires and Successors give and grant unto our said dearest Brother James Duke of Yorke his heires Deputies Agents Commissioners and assignes by these p'sents full and absolute power and authority to correct punish pardon governe and rule all such the subjects of us our heires & successors or any other person or

persons as shall from time to time adventure themselves into any the ports and places aforesaid or that shall or doe at any time hereafter inhabit within the same according to such Lawes Orders ordinances directions and instruccions as by our said dearest Brother or his Assignes shall bee established and in defect thereof in cases of necessity according to the good discretion of his Deputies Comissioners Officers or assignes respectively as well in all Cases and matters Capitall and Criminall as Civill both Marine and others soe alwayes as the said Statutes ordinances and proceedings bee not contrary but as neare as may bee agreeable to the Lawes statutes and Government of this our Realme of England and saving and reserving to Us our heires and successors the receiving hearing and determining of the Appeale and appeales of all or any person or persons of in or belonging to the Towne Fort Tract of Land and p'misses aforesaid or touching any Judgment or sentence to bee there made or given And further that it shall and may bee lawfull to and for our said dearest Brother his heires and assignes by these p'sents from time to time to nominate make constitute ordaine and confirme such Lawes as aforesaid by such name or names stile or stiles as to him or them shall seeme good, and likewise to revoake discharge change and alter as well all and singular Governors Officers and Ministers which hereafter shall bee by him or them thought fit and needfull to be made or used within the aforesaid Towne Fort Tract of Land and p'misses And alsoe to make ordaine and establish all manner of Lawes Orders directions Instruccions Formes and Ceremonyes of Government and Magistracy fit and necessary for and concerning the Government of the said Towne Fort Tract of Land and p'misses soe alwayes as the same bee not contrary to the Lawes and statutes of this Our Realme of England but as neare as may bee agreeable thereunto and the same at all times hereafter to put in execution or abrogate Revoake or change not only within the p'cincts of the said Towne Fort or Tract of Land and p'misses But alsoe upon the Seas in going and coming to and from the same as hee or they in their good discretion shall think fittest for the good of the adventurers and Inhabitants And wee doe further of our especiall grace certaine knowledge and meere mocon grant Ordaine and declare that such Governors Deputyes Officers and Ministers as from time to time shall be authorized and appointed in manner and forme aforesaid shall and may



have full power and authority within the said Towne fort Tract of Land and p'misses to use and exercise martiall Law in Cases of Rebellion Insurrection and Mutiny in as large and ample manner as our Leivetenants in our Countyes within our Realme of England have or ought to have by force of their Comission of Leivetenancy or any Law or Statute of this Our Realme And wee doe further by these p'sents for Us our heires and Successors grant unto our said dearest Brother James Duke of Yorke his heires and assignes that it shall and may bee lawfull to and for the said James Duke of Yorke his heires and assignes in his or their discretions from time to time to admit such and so many person and persons to trade and traffick into and within the said Towne Fort Tract of Land and p'misses and into every and any part and parcell thereof And to have possesse and enjoy any Lands and hereditaments in the parts and places aforesaid as they shall think fit according to the Lawes Orders Constituecons and Ordinances by Our said Brother his heires Deputies Comissioners and assignes from time to time to bee made and established by vertue of and according to the true intent and meaning of these p'sents And under such Condicons reservations and Agreem<sup>ts</sup> as our said dearest Brother his heires and assignes shall sett downe order direct and appoint and not otherwise as aforesaid And wee do further of our especiall grace certaine knowledge and meere mocon for Us our heires and successors give and grant unto our said Dearest Brother his heires and assignes by these p'sents that it shall and may bee lawfull to and for him them or any of them at all and every time and times hereafter out of any of Our Realmes or Dominions whatsoever to take load carry and transport in and into their voyages for and toward the due plantacon of the said Towne Fort Tract of Land and p'misses all such and so many of our loving subjects or any other strangers being not prohibited or under restraint that will become our loving subjects and live under our Allegiance and shall willingly accompany them in the said Voyages together with all such Clothing Implements furniture and other things usually transported and not prohibited as shall bee necessary for the Inhabitants of the said Towne Fort Tract of Land and p'misses and for their use and defence thereof and manning and carryeing on the Trade with the People there and in passing and returning to and fro Yeilding & payeing unto Us our heires

and successors the Customes and duties therefore due and payable according to the Lawes and Customes of this our Realme And wee doe alsoe for us our heires and successors Grant to our said dearest Brother James Duke of Yorke his heires and assignes and unto all and every such Governor and Governors Deputy or Deputies or other officers or Ministers as by our said Brother his heires or assignes shall bee appointed to have power and authority of Government and comand in and over the Inhabitants of the said Towne Fort Tract of Land and p'misses That they and every of them shall and lawfully may from time to time and at all times for ever hereafter for their severall defence and safety encounter repulse expell and resist by force of Armes as well by sea as by Land And by all other wayes and meanes whatsoever All such person and persons as without the speciall Lycence of our said dearest Brother his heires or assignes shall attempt to settle and Inhabitt within the severall p'eincts and limitts of the said Towne Fort Tract of Land and p'misses or any of them And alsoe all and every such person and persons whatsoever as shall enterprise and attempt at any time hereafter the destrucion invasion detriment or annoyance to the Towne Fort Tract of Land and p'misses aforesaid or any part thereof And lastly our will and pleasure is and wee doe hereby declare and grant that these our Letters Patents or the inrollment thereof shall bee good and effectuell in Law to all intents and purposes whatsoever Notwithstanding the not well and true reciting and menconing of the p'misses or any part thereof or the limitts or bounds thereof or of any former or other Letters Patents or Grants whatsoever made or granted of the p'misses or of any part thereof by Us or any of Our Progenitors unto any person or persons whatsoever Bodyes Politick or Corporate or any other Law or other restraint incertainty or imperfection whatsoever to the contrary in any wise notwithstanding Altho' expresse mencon of the true yearely value or certainty of the p'misses or any of them or of any other Guilts or Grants by Us or any of our Progenitors or Predecessors to the said James Duke of Yorke heretofore made in these p'sents is not made or any statute Act ordinance provision proclamacon or restraint to the contrary thereof had made published Ordained or provided or any other Cause matter or thing whatsoever in any wise notwithstanding In witenesse &c Witenesse &c

Ex<sup>r</sup> R. SAWYER

May it please your most Excellent Ma<sup>ty</sup> Upon a Surrender made to your Ma<sup>ty</sup> by his Royall Highnes James Duke of York of certaine Letters patents bearing date the two and twentieth day of March last past granting unto him all that Town of New Castle otherwise called Delaware and Fort thereunto belonging lyeing between Maryland and New Jersey in America, and severall other lands tenements and hereditaments therein mentioned Your Ma<sup>ty</sup> is hereby pleased to grant unto the said James Duke of York all that Town of New Castle otherwise called Delaware and Fort thereunto belonging lyeing between Maryland and New Jersey in America And all that River called Delaware and Soyle thereof and all Islands in the said River And all that Tract of Land upon the West side of the River and Bay of Delaware w<sup>ch</sup> lyeth from Skoolkill Creek upon y<sup>e</sup> said River unto Bombeyes Hook and backwards into the woods so far as the Minquas Country, and from Bombeyes Hooke on the said River and Bay unto Cape Henlopen now called Cape James being the South point of Asca Warmett Inlett and Backwards into the woods three Indians dayes Journeys together with all the lands Islands Soyle, Rivers Harbors Mines Mineralls Quarries Woods Marshes Waters, lakes, Fishings hawkings huntings and Fowlings and all other Royalties profits comodities and hereditaments to the said Town Fort Tract of land and p'misses belonging To hold to the said Duke of York and his heires for ever Paying therefore yearly one Beaver skinn And such other Clauses Powers and Authorities are inserted as were directed by warrant under your Ma<sup>ties</sup> Royall Signe manuell.

R. SAWYER

Aprill 1683

13 Apr. 1683

[*Endorsed*].—Exped<sup>o</sup> apud Westm<sup>a</sup> decimo sexto die Aprilis  
anno R R Caroli secundi Tricesimo Quinto

F MORRICE

I certify that the foregoing is a true and authentic copy.  
15th September, 1873.

WILLIAM HARDY,  
*Ass't Keeper of Public Records.*

## PUBLIC RECORD OFFICE COPY.

Patent Roll of the 35<sup>th</sup> year of Charles the Second. First Part. (N. 24.)

*D con Illustriss Jacobo Duci Ebor sibi hered't assign suis imp-  
puu. 24*

Charles the Second by the Grace of God etc., To All to Whome these Psents shall come Greeteing Knowe yee that wee for diverse good causes and consideraeons us therennto moveing Of our especiall grace certaine knowledge and mere mocon have Given and Granted and by these p'sents for us our heires and Successors doe Give and Grant unto our Dearest Brother James Duke of Yorke His Heires and assignes All that the Towne of Newcastle otherwise called Delaware and Fort therein or thereunto belonging situate lying and being between Maryland and New Jersey in America And all that tract of land lyeing within the compasse or circle of twelve miles aboute the said Towne situate lyeing and being upon the River of Delaware and all Islands in the said River of Delaware and the said River and Soyle thereof lyeing North of the Southermost parte of the said circle of twelve miles about the said Towne and all that tract of land upon Delaware River and Bay beginning twelve miles South from the said Towne of Newcastle otherwise called Delaware and extending South to Cape Lopin Together with all the lands Islands Soyle Rivers Harbers Mines Mineralls Quarrys Woods Marshes Waters Lakes Fishings Hawkings Huntings and Fowlings and all other Royaltys Priviledges Pflitts comodities and hereditaments to the said Towne Fort Tracts of land Islands and p'misses or to any or either of them belonging or appurteyneing with their and every of their appurtenances situate lyeing and being in America And all our Estate Right Title Interest benefit advantage claime and demand whatsoever of in or to the said Towne Fort lands or p'misses or any part or parcell thereof And the Revercon and Revercons Remainder and Remainders thereof together with the yeareley and other

Rents Revenues and p'fitts of the p'misses and of every part and parcell thereof To have and to hold the said Towne of Newcastle otherwise called Delaware and Fort and all and singular the said lands and p'misses with their and every of their appurtenances hereby Given and Granted or hereinbefore meneoned to be Given and Granted unto our said Dearest Brother James Duke of Yorke his heires and assignes for ever To be holden of us our heires and successors as of our mannor of East Greenwich in our County of Kent in Free and comon Soccage and not in Capite or by Knighte Service yeilding and rendring And the said James Duke of Yorke for himselfe his heires and Assignes doth covenant and pmise to yeild and render unto us our heires and Successors of and for the same yearly and every yeare Four Beaver Skins when the same shall be demanded or within Nynety dayes after such demand made And Wee doe further of our especiall grace certaine knowledge and meer mocon for us our heires and Successors Give and Grant unto our said Dearest Brother James Duke of Yorke his heires Deputys Agents Comissioners and Assignes by these p'sents full and absolute Power and authority to correct punish pardon Governe and Rule All such the Subjects of us our heires and Successors or any other pson or psons as shall from time to time adventure themselves into any the Ports and places aforesaid or that shall or doe at any time hereafter inhabite within the same according to such Lawes Orders Ordinances Dirececons and Instrucecons as by our said Dearest Brother or his Assignes shall be established And in Defect thereof in cases of necessity according to the good discreceon of his Deputys Comissioners Officers or Assignes respectively as well in all Cases and Matters Capitall and Criminall as Civill both marine and otheres Soe alwayes as the said Statutes Ordinances and Pceedings be not contrary (but as near as may be) agreeable to the Lawes Statutes and Government of this our Realme of England and Saving and reserving to us our heires and Successors the receiveing hearing and determining of the Appeale and Appeales of all or any pson or psons of in or belonging to the Towne Fort Lands and p'misses aforesaid or touching any Judgment or Sentence to be there made or given And further that it shall and may be lawfull to and for our said Dearest Brother his heires and Assignes by these p'sents from time to time to noiate make



constitute ordeyne and confirme such lawes as aforesaid by such name or names stile or stiles as to him or them shall seeme good and likewise to revoke discharge change and alter as well all and singular Governors Officers and Ministers which hereafter shal be by him or them thought fitt and needful to be made or used within the aforesaid Towne Fort Lands and p'misses And alsoe to make ordeyne and establish all manner of Lawes Orders Dirececons Instrucecons Formes and Ceremonyes of Governement and magistracy fitt and necessary for and concerning the Government of the said Towne Fort Lands and p'misses Soe alwayes as the same be not contrary to the Lawes and Statutes of this our Realme of England but (as near as may be) agreeable thereunto And the same att all times hereafter to putt in execucon or abrogate revoke or change not onely within the p'cinets of the said Towne Fort Lands and p'misses but alsoe upon the Seas in goeing and coming to and from the same as he or they in their good discreceon shall think fittest for the Good of the Adventurers and Inhabitants And wee doe further of our especiall grace certaine knowledge and meere mocon Grant Ordeyne and Declare that such Governors Deputys Officers and Ministers as from tyme to tyme shall be authorized and appointed in manner and forme aforesaid shall and may have full power and authority within the said Towne Fort Lands and p'misses to use and ex'cise Martiall Law in Cases of Rebellion Insurreceon and Mutiny in as large and ample manner as our Leivetenants in our Counties within our Realme of England have or ought to have by force of comission of Leivetenaney or any Law or Statute of this our Realme And wee doe further by these p'sents for us our heires and Successors Grant unto our said Dearest Brother James Duke of Yorke his heires and assignes That itt shall and may be lawfull to and for the said James Duke of Yorke his heires and Assignes in his or their discreceons from tyme to tyme to admit such and soe many pson and psons to trade and traffick into and within the said Towne Fort Lands and p'misses and into every and any part and parcell thereof and to have possesse and enjoy any Lands and Hereditaments in the parts and places aforesaid as they shall thincke fitt according to the Lawes Orders Constituecons and ordinances by our said Brother his heires Deputys Comissioners and Assignes from tyme to tyme to be made and established by



virtue of and according to the true intent and meaneing of these p'sents and under such condicions Reservacons and Agreements as our said Dearest Brother his heires and assignes shall sett downe order direct and appoint and not otherwise as aforesaid And wee doe further of our especiall grace certaine knowledge and meere mocon for us our heires and successors Give and Grant unto our said Dearest Brother his heires and assignes by these p'sents That it shall and may be lawfull to and for him them or any of them att all and every tyme and tymes hereafter out of any of our Realmes or Dominions whatsoever to take loades carry and transport in and into their voyages for and towards the Plantacon of the said Towne Fort Lands and p'misses All such and soe many of our loving Subjects or any other straingers being not phibited or under restreint that will become our loving subjects and live under our Allegiance and shall willingly accompany them in the said voyages together with all such Cloathing Implements Furniture or other things usually transported and not phibited as shal be necessary for the Inhabitants of the said Towne Fort Lands and p'misses and for their use and defence thereof and managing and carryeing on the trade with the People there and in passing and returneing to and fro yeilding and paying unto us our heires and Successors the customes and dutys therefore due and payable according to the Lawes and Customes of this our Realme And wee doe also for us our heires and Successors Grant to our said Dearest Brother James Duke of Yorke his heires and assignes and to all and every such Governor and Governors Deputy or Deputys or their Officers or Ministers as by our said Brother his heires or assignes shall be appointed to have power and authority of Governement and Comand in and over the Inhabitants of the said Towne Fort Lands and p'misses That they and every of them shall and lawfully may from time to time and att all times for ever hereafter for their severall defence and safety Encounter Repulse and expell and Resist by force of Armes as well by sea as by land and all ways and meanes whatsoever All such pson and psons as without the speciall lycence of our said Dearest Brother his heires or Assignes shall attempt to settle and inhabite within the severall p'cinets and limitts of the said Towne Fort Lands and p'misses And also all and every such pson and psons whatsoever as shall enterprize and attempt att any time

hereafter the Destruction Invasion Detriment or Annoyances to the parts places Towne Fort Lands and p'misses aforesaid or any part thereof And lastly our Will and Pleasure is and wee doe hereby Declare and Grant that these our Letters Patents or the Inrollment thereof shal be good and effectuell in Law to all intents and purposes whatsoever Notwithstanding the not well or true reciteinge or menconing of the p'misses or any part thereof or the limitts or bounds thereof or of any former or other Letters Patents or Grants Whatsoever made or granted of the p'misses or of any part thereof by us or any of our pgenitors unto any psons whatsoever Bodys Politick or Corporate Or any other Law or other Restrainte Incertainety or Impfeccon Whatsoever to the contrary in any wise notwithstanding although exp'sse meneon &c In Witnesse &c Witnesse the King att Westm the twoe and twentieth day of March.

By Writt of Privy Seale &c.

I certify that the foregoing is a true and authentic copy.

WILLIAM HARDY,

*Assistant Keeper of Public Records.*

13th September, 1873.

Kingdom of England, City of London, ss.

*Arthur Henry Bleeck*, being duly sworn, upon his oath saith—

That he is a resident of said city, and has been employed for the past three years by Henry Stevens, of said city, whom he has assisted at various times in transcribing from and collating by the records of the said Kingdom, various documents relating to the Colonial History of the United States, and in such employment this deponent has caused to be transcribed from the records of the State Paper Office, of said Kingdom, now contained in the Record Office thereof, the documents hereto annexed, and that the same are true copies from said records, which consist of the original documents bound together, except in the case of the letter to William Penn, Proprieties, Vol. 28, p. 55-56; a like letter Proprieties, B. T., Vol. 28, p. 267; and the letter from William Popple, Proprieties, B. T., Vol. 31, p. 70-71, which are records copied in a book.

And deponent further saith—

That he has placed before each document a reference to the book and page where each is to be found, and copies of the endorsements and titles thereof respectively.

That in such reference, the letters P. R. O., B. T. mean Public Record Office, Board of Trade, and refer to books with such indorsements remaining in said office.

And deponent further saith—

That after the copying the said documents, he personally went over, examined, and compared the said copies, side by side, with the originals, phrase by phrase, and word by word, with special reference to spelling, punctuation, and the use of capitals, figures, and other signs, and the deponent, after the most careful comparison, believes the same to be exact copies of the originals in all said particulars, he having had much experience and practice in this kind of comparison, and further, this deponent saith not.

A. H. BLEECK.

Sworn, and solemnly declared, at the Mansion House, in the city of London, this 11th day of September, 1873, before me.

SYDNEY H. WATERLOW,  
*Lord Mayor.*

[L. S.]

RICH. HAWLEY,  
*Depty. Registrar.*

Sworn, at my office, No. 21 Birchin Lane, Cornhill, in the city of London, England, this 11th day of September, 1873, before me.

[L. S.]

EDWIN A. BURWASH,  
*Not. Pub.*

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[*Indorsed*].—P. R. O., B. T., Colonial Papers, Vol. 41.

13 April 83

GRANT OF DELLAWARE B. C. P. 48.

May it please Your Most Exe<sup>t</sup> Ma<sup>ty</sup>

Upon a Surrender made to your Ma<sup>ty</sup> by His Roy<sup>ll</sup> Highness James Duke of York of certain Letters Patent bearing date the two and twentieth day of March last past, granting unto him all that Town of New Castle otherwise called Delaware and Fort thereunto belonging, lying between Maryland and New Jersey in America, and severall other Lands, Tenements and Hereditaments therein menconed; Your Ma<sup>ty</sup> is hereby pleased to grant unto y<sup>e</sup> said James Duke of York all that Town of New-Castle otherwise called Delaware and Fort thereunto belonging, lying between Maryland and New Jersey in America; and all that River called Delaware and Soyl thereof, and all Islands in y<sup>e</sup> said River and all that Tract of Land upon y<sup>e</sup> West side of y<sup>e</sup> River and Bay of Delaware, which lyeth from Skookill Creek upon y<sup>e</sup> said River unto Bombeys Hook and backwards into the Woods so far as y<sup>e</sup> Minquas Country; and from Bombeys Hook on y<sup>e</sup> River and Bay unto Cape Henlopen now called Cape James, being the South point of Asia Warmet Inlet and backwards into y<sup>e</sup> Woods three Indian days Journey together with all y<sup>e</sup> Lands,

Islands, Soyl, Rivers, Mines, Mineralls, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawkings, Hunttings, and Fowlings and all other Royalties, Profits, Commodities and Hereditaments to y<sup>e</sup> said Town, Fort, Tract of Land and Premises belonging to hold to the said Duke of York and his Heirs for ever. Paying therefore yearly one Beaver Skinn and such other Clauses, Powers and Authorities are inserted as were directed by Warrant under your Ma<sup>ty</sup> Royall Sign Mannall.

R. SAWYER

13 Apr. 1683.

[Indorsed]—P. R. O., B. T., Colonial Papers, Vol. 41, B. C. P. 5.

3 May 1683.

REFERENCE, OF MY L<sup>d</sup> BALTIMORE'S PETITION CONCERN<sup>g</sup>  
Y<sup>E</sup> DUKE'S GRANT.

Rec<sup>d</sup> y<sup>e</sup> 4<sup>th</sup> May 83

Read 30 May, 83:

23 June, 83

23 July, 84

18 Aug: 85

2 Sept: 85

8 Oct: 85

17 Oct: 85

31 Oct: 85

Entd. B. of Maryl. P—105

B. C. P. 5.

At the Court at Hampton Court the 31<sup>th</sup> of May 1683.

By the Kings most Excellent Ma<sup>ty</sup> & the Lords of his Ma<sup>ty</sup>

[L. S.] most Hon<sup>ble</sup> Privy Councill

Upon reading this day at the Board the humble Peticon of Richard Burke Gent Servant to the Right Hon<sup>ble</sup> Charles Lord Baltimore Praying in behalfe of his Lo<sup>p</sup> that a Grant (w<sup>ch</sup> is passing) from his Maj<sup>ty</sup> to his Royall Highness the Duke of Yorke of the Towne of Newcastle and the Adjacent Country on the Confines of Maryland may not passe the Great Seale, untill his Ma<sup>ty</sup> shall be satisfyed of the Extent of Letters Patents formerly granted to Cecill Lord Baltimore, wherein the said Towne and Adjacent Country is alledged to be comprised; His Ma<sup>ty</sup> in

Councill was pleased to Order that the Examination of that whole matter be, & it is hereby referred to the Right Hon<sup>ble</sup> the Lords Committees of this Board for Trade and Forreigne Plantations, and upon their Lo<sup>ps</sup> report of the State thereof with their opinion thereupon his Ma<sup>ty</sup> will declare his further pleasure.

PHILLOYP.

[*Indorsed*—P. R. O., B. T., Colonial Papers, Vol. 41.

For the Right Honorable Lyonell Jenkins one of his Maiesties principall Secretaries of State

Present at White Hall

11. Decemb<sup>r</sup> 83

My L<sup>d</sup> BALTEMORE

Hon<sup>d</sup> S<sup>r</sup>

I know it is to great a boldnes I take in givinge you the trouble so often as I do with my l<sup>res</sup>; w<sup>ch</sup> I should not pr<sup>e</sup>sume to do, did not a very great concerne of mine lye afore the Council, of w<sup>ch</sup> you are; It is S<sup>r</sup> ab<sup>t</sup> a Grant w<sup>ch</sup> I am assured my ill Neighbor W<sup>m</sup> Penn is endeavouring by his Agents in Engl<sup>d</sup> to gett passt the Great Seal, of no lesse then one Third of my Province, I mean that part w<sup>ch</sup> lyeth to the Eastward of Chesapeake Bay, and is on delaware River to the southward of 40<sup>th</sup> degree N. Latitude, w<sup>ch</sup> he pretends was seated by some dutch afore my Patten for Maryl<sup>d</sup> was granted; w<sup>ch</sup> neither he nor his Agents are as yet able to prove; and when ever they do, it will signifie little to my preiudice; for I will sufficiently make it Evident that if any dutch were there at that time seated, they were but usurpers and had usurped what they so seated; being never own'd by the states of Holland; nay I will oblige my selfe to prove such were disown'd by y<sup>e</sup> states, if I may have liberty and time allowed me till May next to appeare in Person at the Council board there to defend my Right w<sup>ch</sup> I hope you'll favour me so far as to procure for me, and I shall account my self highly obliged and for ever remaine

S<sup>r</sup> Y<sup>r</sup> humble faithfull Serv<sup>t</sup>

C. BALTEMORE

11<sup>th</sup> decemb<sup>r</sup> 1683



[*Indorsed*—P. R. O., B. T., Colonial Papers, Vol. 41, B. C.,  
P. 22.

MEM<sup>LL</sup> CONCERN PENNSYLVANIA

Rec<sup>d</sup> & Read 12 Feb<sup>ry</sup> 8<sup>3</sup>

The Business put off till Aprill

when my L<sup>d</sup> Baltimore will be here

A Certain Tract of Land in America having been Surrendred long since by y<sup>e</sup> Dutch to y<sup>e</sup> King, & ever since in y<sup>e</sup> possession of His Royall Highnes

His Royall Highness having demisd it to William Penn Esq<sup>r</sup> (lying contiguous to Pensylvania) at a Rent, The Lord Baltimore now disturbs W<sup>m</sup> Penn & his Agents there, & Opposes y<sup>e</sup> passing of a Patent of it to His Roy<sup>ll</sup> Highnes here

And upon a Hearing before the Lords of y<sup>e</sup> Committee of Plantations it being alledged in the behalf of His Royall Highness that this Tract of Land was inhabited by Christians before y<sup>e</sup> Lord Baltimore's Patent, w<sup>ch</sup> Extended only to Land uninhabited by Christians, It was Ordered that they should be ready with proofs to that point.

It is now desired in the behalf of His Royall Highness, a day may be appointed to be heard to it.

[*Indorsed*—P. R. O., B. T., New York, Vol. 4., B. F. P., 23.

MR PENNS ADVICE TO THE INHABITANTS OF PENNSYLVANIA

Rec<sup>d</sup> 20 Dec: 1693

from Coll Fletcher

Read 27 Dec. 93

& 2 Feb 9<sup>3</sup>

Extracted from a letter of William Penn to a Certain person in Philadelphia.

For what concerns the Commission to the Governor of New-yorke to add you to his care during the warr and my absence I

referr you to Thomas I Colne the bearer who is fully instructed as also to some other letters of that import. in short insist upon your patent with wisdom & moderacon but steddy integrity you are to hear and obey the Crowne of England speaking in the language and voice of the Law which this is not but Sir Volo Sir Jubeo &c doubtlesse upon missadvise of your envious neighbours that suggests the French will make way into the Colonies by you, Sett forth the falshood of it by your singular situation by land and sea Your hazards charges labours and that the Government was your motive more than land and that you were a people that could have lived here at home and went not upon motives of guilt or poverty and that it will tend to the ruine of the Plantacon which has brought and daily brings in more custome to the Crowne than revenue to the Government there And send this over to Tho: Barker Phi: Ford Jos Martin and Fran: Plumsteed and others concerned and both freinds and others of London and Bristoll will deliver your Representation to the Lords of the Plantacons or to the King and Council if you will but protest against any proceeding of the Governor of Newyorke upon his arbitrary Commision which as I said before must follow from misinformacon and an excess of care in the Lords to preserve the Colonies from the French.

By another Letter to the freinds in Pensylvania M<sup>r</sup> Penn writes "to finde out a hundred persons in" the Countrey of Pensilvania each to lend him one hundred pounds without use for three years and without any o<sup>y</sup><sup>e</sup> security than his own bond and promises them that within Six months at farthest after the receipt of it he will imbarque for that place with all his family.

Some meetings have been about it and It is reported that how much soever they appear his freinds they stagger when he comes neer their purses those that are able want better security and those that are not (to excuse themselves saying they would if they could.

This Accounts comes to By Letter from Philadelphia.

BEN FLETCHER

P. R. O., B. T. America & West Indies. Pennsylvania.  
V. 599.

(Indorsed)

12 July 1694

ORDER REFERRING M<sup>R</sup> ATTORNEY GENERALL; REPORT UPON  
M<sup>R</sup> PEN'S PETITION TO THE COMMITTEE

Rec<sup>d</sup> 13 July 94

Ent lib Pnsylvania p 43

B: A: P: 11:

[L. s.] At the Court at Whitehall the 12<sup>th</sup> of July 1694  
By the Lords of Their Ma<sup>ty</sup>s most Hono<sup>ble</sup> Privy Councill.

Upon reading the annexed Report of Their Ma<sup>ty</sup>s Atturney and Solicitor Generall, touching the Right of Government both Civill and Military in the Province of Pensylvania, gran by Letters Patents from King Charles the Second under the great Seal of England bearing date the 4<sup>th</sup> day of March in the 33<sup>d</sup> Year of His Reigne unto William Penn Esq<sup>re</sup>, And also touching a Commission to Colonel Fletcher Governor of Yorke, who was appointed by his Ma<sup>ty</sup> to be Captain Generall and Governor in Cheif of the said Province of Pensylvania.

It this day Ordered in Councill that it be and still is hereby Referred to the R<sup>t</sup> Hono<sup>ble</sup> the Lords of the Committee of Trade and Plantations, for their Consideration, and to Report what their Lo<sup>rps</sup> conceive fit for Her Ma<sup>ty</sup> to do in the matter.

WM. BRIDGEMAN.

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TO THE QUEENS MOST EXCELLENT MA<sup>TY</sup>

May it please your Ma<sup>ty</sup>.

In humble obedience to your Ma<sup>ty</sup>s Order in Councill annexed, upon the Petition of William Penn Esq<sup>re</sup> Whereby we are commanded to Consider of the said Petition, and of the letters Patents Granted to the said William Penn of a certain Tract of Ground called Pensylvania in America; And also of the Commission Granted to Col. Fletcher, and to Report Our Opinion

upon the whole matter to Yo<sup>r</sup> Ma<sup>ty</sup> in Couneill. Wee have perused the letters Patents granted by His late Ma<sup>ty</sup> King Charles the Second under the Great Seal of England bearing date the fourth day of March in the 33<sup>d</sup> Year of His said late Ma<sup>ty</sup>s Reigne whereby His said Ma<sup>ty</sup>, for the Considerations therein mentioned, was pleased to Grant to the said W<sup>m</sup> Penn his Heires and Assignes a large Tract of Land in America, therein described and called by the name of Pensylvania, to be held of His said late Ma<sup>ty</sup> His Heires and Successors Kings of England, as of Their Castle of Windsor, in Free and Common Socceage, by fealty and the yearly Rent of two Beaver Skins, and the fifth part of the Gold and Silver Oar found in the limitts of the said Tract of Ground;

And His said Ma<sup>ty</sup> did thereby Erect the said Country and Islands into a Province, and did for Himself, His Heires and Successors Constitute the said W<sup>m</sup> Penn, his heires and Assignes the true and absolute Proprietaries of the said Country and Premisses. Saving to His said Ma<sup>ty</sup> His Heires and Successors, the Faith and Allegiance of the said W<sup>m</sup> Penn, his Heires and Assignes, and all other the Proprietaries Tenants and Inhabitants within the said Territories, And also the Sovereignty of the said Country, And did Grant to him and them, amongst divers other Powers, Jurisdictions and liberties therein mentioned, Power to make Enact and publish Lawes for the good Government of the Country, and to Constitute and appoint Judges and other officers, and Erect Courts for the Civill Government; And also authority to him and them, by themselves or their Captains, to Train and Muster the Inhabitants of the said Province, and to use all such Powers as a Captain Generall of an Army may do.

Wee have also perused a Copy of Col. Fletchers Commission, produced to us by M<sup>r</sup> Penn, dated the 21<sup>th</sup> of October in the fourth year of Your Ma<sup>ty</sup>s Reigne, wherein is recited, that by reason of great neglect and miscarriages in the Governmt<sup>t</sup> of Pensylvania, and the absence of the Proprietary the same was falne into disorder and confusion, by meanes whereof not only the publick Peace and administration of Justice whereby the Properties of Yo<sup>r</sup> Ma<sup>ty</sup>s Subjects which should be preserved in in those parts, was broken and violated; But there was also great want of Provision for the Guard and Defence of the said

Province against Your Ma<sup>ty</sup>s Enemies, whereby the said Province adjacent Colonies were much Exposed and in danger of being lost from the Crown of England, therefore your ma<sup>ty</sup>s for the prevention thereof and for the better Defence and Security of your Subjects Inhabiting in those Parts during time of war did find it necessary to take the Government of Pensylvania into your hands and under your immediate care and Protection, and did therefore constitute and appoint Col. Fletcher to be Your Captain Generall and Governor in Chief in and over the said Province of Pensylvania during Your Ma<sup>ty</sup>s pleasure.

We are humbly of Opinion that by the said letters Patents the Right of Governm<sup>t</sup> both Civill and Military in the said Province of Pensylvania was granted to the Petitioner, subject nevertheless to your Ma<sup>ty</sup>s Sovereignty over the said Province and the Inhabitants thereof, by vertue of which Sovereignty, Wee humbly conceive Your Ma<sup>ty</sup>s in Cases of Extraordinary Exigencies happening or arising through the default or neglect of the Petitioner or of those appointed by him, or of any inability of the Petitioner to protect or defend the said Province and the Inhabitants thereof, in times of Warr or imminent danger, may Constitute a Governor of said Province for the Protection and Preservation of the said Province, and Yo<sup>r</sup> Ma<sup>ty</sup>s Subjects there; and upon the reasons and Grounds mentioned in Col. Fletchers Commission, Wee are humbly of opinion that Your Ma<sup>ty</sup> might Lawfully Grant such a Commission, but when those reasons and Grounds do fail or Cease, then wee do humbly conceive that the Right of Government doth belong to your Petitioner.

All w<sup>ch</sup> neverthelesse is most humbly submitted to your Ma<sup>ty</sup>s Royall wisdom and pleasure.

12 July 1694

EDW. WARD

A true Copy

THO. TREVOR

P. R. O., B. T., America & West Indies. Pennsylvania. Vol. 599.

(Indorsed)

25 July 1694

REPORT OF THE ATTORNEY AND SOLICITOR GEN<sup>LL</sup> UPON  
THE GRANTS OF NEW CASTLE & C TO M. PEN

Read 27 July 94            B: A:    P: 12:

Ent lib Pensilvania p: 45

To the Right Hon<sup>ble</sup> the Lords of the Committee of Trades & plantacons.

May it please yo<sup>r</sup> Lordppps

M<sup>r</sup> Penn acquainting us that it was yo<sup>r</sup> Lordppps pleasure that wee should lay before your Lordppps his Tytle to the Countrey of Newcastle and all the Tracts of Land depending thereon in America to which as well as Pensilvania the powers of Colonell Fletchers Comission doe Extend, He also produced to us the writings & Evidences following that is to say

One Indenture bearing Date the 24<sup>th</sup> Day of Aug<sup>t</sup> 1682. made Between his then Royall Highness James Duke of Yorke &<sup>a</sup> of the one part and the said M<sup>r</sup> Penn of the other part Whereby his said Royall Highness for the good will he bore to M<sup>r</sup> Penn & for the consideracon of 10<sup>s</sup> Did Bargain, Sell Enfeoffe & confirme to the said M<sup>r</sup> Penn his heires and Assignes All That the Towne of Newcastle otherwise called Delaware in America, and all that Tract of Land lying within the Compass or Circle of Twelve Miles about the same situate lying and being upon the River Delaware in America, and all Islands in the River Delaware and the said River and Soyle thereof lying North of the Southermost part of the said Circle of 12 Miles about the said Towne, together with all Rents Services Royalties Franchises Dutys Jurisdiccions Libties and priviledges thereunto belonging And all the Estate Right Tytle Interest powers property Clayme and Demand whatsoever of his said Royal highness of in or to the same or to any part or parcell thereof (w<sup>th</sup> a saving to his said Royall highness his Agents & Servants the Free Use of all Ports Wayes & passages into through and out of the bargained p<sup>o</sup>misses) and under the reserved Rent of five shillings to his



said Highness his heires and Assignes at Michas Yearly w<sup>th</sup> a Covenant from M<sup>r</sup> Penn his heirs and Assignes to pay the same Rent accordingly, And a Covenant from his Royall Highness his heires & Assignes with M<sup>r</sup> Penn for making further assurance during Seaven Yeares and a Letter of Attorney in the body of the Deed to two persons to make Livery The deed is Endorsed to be entred in the Office of Records for Province of new Yorke the 21<sup>st</sup> of Novemb<sup>r</sup> 1682, & Inrolled in the Excheq in 1684.

One other Indenture of the same Date w<sup>th</sup> the others whereby his s<sup>d</sup> Royall highness for Tenn shillings & other Consideracons therein menconed Did Bargaine Sell Enfeoffe and Confirme unto the said M<sup>r</sup> Penn his heires and Assignes All That Tract of Land upon Delaware River and Bay beginning twelve Miles South from the Towne of Newcastle otherwise called Delaware & extending South to the Whore-Kills otherwise called Copin Lopen together w<sup>th</sup> Free and undisturbed use and passage into and out of all harbours Bays Waters Rivers Isles and Inletts belonging to or leading to the same Together w<sup>th</sup> the Soyle Fields Woods Vnderwoods Mountaines Hills Fennes Isles Lakes Rivers Rivilets Bays and Inletts seituat in or belonging unto the Lymitts and Bounds aforesaid together w<sup>th</sup> all Sorts of Mineralls and all the Estate Interest Royalties Franchises powers privileges & Immunities whatsoever of his said Royall highness therein or in or unto any part or parcell thereof w<sup>th</sup> the lik<sup>e</sup> saving to his Royall highness his Agents and Servants as in the former, onely these last p<sup>m</sup>isses are mentioned to be holden of his said Royall highness and his heires as of their Castle of New-Yorke in Free and Comon Soeeage under the Yearly Rent of one Rose at Michaelmas Yearly if Demanded, M<sup>r</sup> Penn Covenants within a yeaere to Erect a Registry upon the p<sup>m</sup>isses and therein to Sett downe all Rents and profitts w<sup>ch</sup> he his heires or Assignes should any ways make raise or procure out of the p<sup>m</sup>isses and att Michas Yearly to pay and deliver to his said Highness his heires and Assignes one moyety thereof w<sup>th</sup> power of Distress to his Highness his heires and Assignes for non payment thereof, And a Covenant for his Highness his heirs and Assignes to make further assurance during Seaven Yeares The Indenture of the Inheritance is Endorsed to be Entred in the Office of Records for the Province of New Yorke the 21<sup>th</sup> of Novemb<sup>r</sup> 82 and there is a Letter of Attorney in it to make Livery

By virtue of w<sup>ch</sup> Deeds M<sup>r</sup> Penn affirms he quietly held and enjoyed all the p<sup>er</sup>misses thereby Granted as fully as he did the Province of Pensilvania untill the coming of Coll: Fletcher and his Entrance by virtue of his Comission and that the Inhabitants of these Countryes as well as those of Pensilvania constituted the Assembly held under Colonel Fletcher that made those Laws which are now humbly offered to her Ma<sup>ties</sup> Royall approbacon.

25 July 94

EDW: WARD.

THO: TREVOR:

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[*Indorsed*].—P. R. O., B. T., America & West Indies, Pennsylvania, Vol 599 B: A: P: 17:

3 August

MR PEN'S AGREEM<sup>T</sup> CONCERNING THE LAWS OF PENNSYLVANIA &C  
Ent lib Pensilvania p: 48.

The Laws of Pensilvania made under the Governm<sup>t</sup> of Coll: Fletcher being this Day read at the Councill Board before the Lords of the Committee of Trade and Plantations in order to be represented to the Queens Maj<sup>ty</sup> for her Roy<sup>al</sup> approbation or disallowance and severall of them to witt, The Law about Erecting a Post Office at Philadelphia, The Law ab<sup>t</sup> Estates of Testates & Intestates, The Law Concerning y<sup>e</sup> produce of the Country to pass for Pay, The Law about Recording of Deeds, The Law about Rates for money, The Law about Factors and their Employees not being allowed or Confirmed, and other of the said Laws being rejected, William Pen Esq<sup>re</sup> doth consent and Agree that the said Laws which are not allowed or Confirmed and all other the said Laws which shall not be confirm'd or allowed and (which are not or shall not be rejected by Her Maj<sup>ty</sup>) Shall have the full Force and Vertue of Laws and be put in Execution in the said Country, untill the same shall be altered or revoked in a full Generall Assembly to be held in Pensilvania

Councill Chamber  
the 3<sup>d</sup> of Aug<sup>st</sup> 1694

WM PENN

Witness

JOHN LOVEY

2 R

[Indorsed]—P. R. O., B. T. Proprietaries, Vol. 6, K 5.

PENNSYLVANIA

MEM<sup>L</sup> FROM M<sup>R</sup> RANDOLPH CONTAINING ARTICLES OF COMPLAINTS AGAINST M<sup>R</sup> PENN

Rec<sup>d</sup> }  
Read } June 17<sup>th</sup> 1702  
Entred fo: 35. K. 5

To the R<sup>t</sup> Hon<sup>ble</sup> the Lords Comm<sup>e</sup> for Trade & Plantations.

Articles aga<sup>t</sup> William Penn Esq<sup>r</sup> pretended Governo<sup>r</sup> of the three Lower Counties on Delaware Bay in America.

1<sup>o</sup> He assumes y<sup>e</sup> Governm<sup>t</sup> of y<sup>e</sup> three Lower Counties haveing no Legall right, or power so to do.

2<sup>o</sup> He lays Taxes & Levies Money upon her Ma<sup>ties</sup> subjects Inhabiting there, & Exacts Customs & lays 8<sup>p</sup> Tunn upon all Foreign Vessells which is destructive to y<sup>e</sup> Trade of England, whilst y<sup>e</sup> Inhabitants ship off great quantities of Tobacco Yearly from thence to Scotland directly.

3<sup>ly</sup> He has not qualified himself to be Governo<sup>r</sup> by being first allowed of by his Late Ma<sup>ty</sup>s Order in Councill befor he enter'd upon the Governm<sup>t</sup> of his Province, as by the Act for preventing frauds & regulating Abuses in y<sup>e</sup> Plantation Trade, made in the 7<sup>th</sup> & 8<sup>th</sup> of his Late Ma<sup>ty</sup>

4<sup>thly</sup> He hath (since he went over last to his Province) made Laws destructive, & Repugnant to the Acts of Trade & Navigation, But for y<sup>e</sup> Encouragm<sup>t</sup> of Illegal Traders.

5<sup>ely</sup> He hath Assumed to himself y<sup>e</sup> third part of all penalties, and Forfeitures Granted to her Ma<sup>ty</sup> her Heirs and Successors by the said Act for preventing Frauds &c. which were not before particularly disposed of in y<sup>e</sup> said Act.

6<sup>ly</sup> His late Governo<sup>r</sup> M<sup>r</sup> Markham hath also assum'd to himself her Majesties third part of two Forfeitures and converted them to his own use.

7<sup>ly</sup> The s<sup>d</sup> Markham did on y<sup>e</sup> 30<sup>th</sup> of July 1689 illegally & Arbitrarily Imprison the Surveyo<sup>r</sup> Gen<sup>l</sup> of her Ma<sup>ties</sup> Customs, & threatned to keep him a Close prison<sup>o</sup> untill he had deliver'd up to the said Markham y<sup>e</sup> Plantacon Bond of 1000<sup>th</sup> enter'd into by John Deplovey Merch<sup>t</sup> in Philadelphia, who was security

w<sup>th</sup> Stephen Blackleech M<sup>r</sup> of y<sup>e</sup> Briganteen George of New England forfeited for breach of y<sup>e</sup> Acts of Trade. By which means y<sup>e</sup> prosecucon aga<sup>t</sup> Deplovey (who was then a man of a good Estate, but since insolvent) is wholly stopt. Her Ma<sup>ty</sup> looses the Debt & y<sup>e</sup> Bond is deliver'd up to y<sup>e</sup> said Markham by the prosecuto<sup>r</sup> before he could be set at Liberty. All which is humbly submitted by

ED RANDOLPH. S: G:

June: 16: 1702:

P. R. O., B. T. Proprieties, Vol. 28, pages 55, 56.

[Entry.]

TO WILLIAM PENN ESQ<sup>R</sup>.

1702 June 23<sup>d</sup>

Letter to M<sup>r</sup> SR,

Penn for an Answer to the 3 Queries sent him the 19<sup>th</sup> of the last month & desiring an Acco<sup>t</sup> of his Title to the Soile & Gov<sup>t</sup> of the 3 lower Counties

Your Letter of the 22<sup>d</sup> Instant, with the Rejoynders to Coll Quarry's Replyes and the Memorial there inclosed, have been read to the Lords Commissioners for Trade and Plantations; Who have thereupon commanded me to signify to you, That they are yet in Expectation of your answer to the three Queries which I sent you by their Order the 19<sup>th</sup> of the last month; And do also expect, that you do inform them of your Title to the Soile and Government of the three lower Counties, upon which Subject you promised at their Board the 4<sup>th</sup> Instant to give them a final answer; (They not looking upon what you have exprest in the 8<sup>th</sup> Article of your first Rejoynder to be any way satisfactory) And that upon receiving your answer to the said three Queries, with an Account of your Titles to the three lower Counties, they will be able to discharge their Duty in making a Representation to her Majesty upon the whole matter.

And Whereas in your foresaid Letter you say that your health, the season of the year and your family affaires do call you out of Town; They direct me to observe to you that the time of your Attendance has been lengthened at your own desire, Their Lordships having assured you that they would Sit de die in diem till your affaires should be wholly dispatched. And they therefore now expect your final Answer to all the particulars here mentioned, in writing, on munday next or sooner, if you can be ready. I am &c

Whitchall June }  
23<sup>d</sup> 1702. }

W: P:

[Indorsed]—P. R. O., B. T. Proprietaries. Vol. 7. L. 6.

PENNSYLVANIA

LETTER FROM MR PENN OF YE 4<sup>TH</sup> DEC<sup>R</sup> 1702, INCLOSING A  
DECLARATION SIGNED BY HIM RELATING TO HER  
MAY<sup>TY</sup>S TITLE TO YE 3 LOWER COUNTIES.

Rec<sup>d</sup> }  
Read } Dec<sup>r</sup> 8<sup>th</sup> 1702  
Enter fo P. 266.

L. 6.

Hon<sup>ble</sup> Friends

I have sign'd a paper that I hope will please you, and can signe no other without signeing away those dear bought Countys that 20000lb will not reprize me, as well in Toyle as Gover<sup>t</sup> I begg your favor in my Dispatch, & that I may have three copys sign'd of the Queens approbation, to keep one & send two by severall ways of Conveyance, I am without leggs, but w<sup>th</sup> great respect.

Your Faithfull friend  
to serve you to my power  
WM PENN

4. X<sup>br</sup> 1702

4<sup>th</sup> Xber 1702

COPY

I do hereby declare and promise I will take no advantage of the Queens Royall approbation of my Deputy Governor Coll Andrew Hamilton, for one year, to elude or diminish her pretensions or Claime of Right to the Government of the lower Counties upon Delaware, now under the administration of the said Hamilton in Conjunction with the Province of Pennsylvania.

• W<sup>M</sup> PENN

[*Entry*].—P. R. O. Proprieties. B. T. Vol. 28. p. 267-8.

1702. Decemb<sup>r</sup>8<sup>th</sup> Letter to M<sup>r</sup>

Penn in An-

swer to his of S<sup>r</sup>the 4<sup>th</sup> Instant,

relating to her

Majesties Title

to the 3 lower

Counties.

TO WILLIAM PENN ESQ<sup>R</sup>.

Your Letters of the 4<sup>th</sup> & 7<sup>th</sup> Ins<sup>ts</sup> with the Papers there inclosed, have been laid before the Lords Commissioners for Trade and Plantations; And upon Consideration of your Declaration relating to her Majesties Right to the three lower Counties upon Delaware River, (which was inclosed in the first of your said Lett<sup>rs</sup>) Not finding the same so conformable to her Majesties Order in Council as they conceive it ought to be, Their Lordships have directed me to return it to you, and therewith also to send you (as I do here inclosed) the form of a Declaration prepared by themselves in Conformity to her Majesties said Order, which they desire you to dispatch accordingly, upon four large Paper: And I am further to assure you that upon the Receipt thereof they will make no delay in what remains to be done by them, in pursuance of her Majesties Aforesaid Order.

I am &c.

W: J:



1702. I under written do by these pres<sup>ts</sup> declare and  
 December 8<sup>th</sup> promise, that the Queens Royal Approbation  
 and allowance of Collonel Andrew Hamilton to  
 be Deputy Governour of Pennsylvania and the  
 three Lower Counties upon Delaware River,  
 for one Year only, shall not be construed in  
 any Man<sup>r</sup> to diminish or set aside her Majesties  
 Claim of Right to the said three lower Coun-  
 ties. In Witness whereof I hereunto Set my  
 hand and Seal, this Day of December 1702.

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[*Indorsed*—P. R. O. Proprieties, B. T., Vol. 7, L. 43.

PENNSYLVANIA.

M<sup>r</sup> Penn's Declaration relating to her Ma<sup>ty</sup>'s Title to y<sup>e</sup> lower  
 Counties upon her Ma<sup>ty</sup>'s Approbation of M<sup>r</sup> Jn<sup>o</sup> Evans as  
 Dep<sup>ty</sup> Gov<sup>r</sup> of Pennsylvania. Dated 13<sup>th</sup> July 1703.

Rec<sup>d</sup> }  
 Read } July 14<sup>th</sup> 1703.

Exd                      Entr fo p. 352 L. 43.

I under written do by these Presents Declare and Promise  
 that the Queens Royal Approbation and Allowance of John  
 Evans Gent<sup>n</sup> to be Deputy Governor of Pennsylvania and the  
 Three lower Counties upon Delaware River, shal not be con-  
 strued in any manner to diminish or set aside Her Majesty's  
 Claim of Right to the said Three lower Counties.

In Witness whereof I have hereunto set my hand and Seal,  
 This 13 Day of July 1703

WM PENN  
 [Seal]

[*Indorsed*—P. R. O., B. T. Proprieties, Vol. 9.

PENNSYLVANIA

Letter from M<sup>r</sup> Penn inclosing his Declaration of her Ma<sup>ty's</sup>  
Right to the 3 Lower Counties adjoyning to Pennsylvania  
(For the Lords Com for Trade & Plantations at Whitehall)

Reced }  
Read } 2 July 1708.

P. 45.

Exd Ent<sup>rd</sup> fo: 64:

F

2<sup>d</sup>  $\frac{m}{3}$  (Jul) 1708

Honorable Friends

I have Submitted to w<sup>t</sup> you are pleased to say you could not help, & that time & other Circumstances will not allow me to sett that matter of the Queens Right to the Lower Countys in a better explanation, the scruple being only about Right of Govern<sup>t</sup> & that my Recompense from these y<sup>t</sup> had the advantage of the Commission of Trade, that was my proposall for a better and more Impartiall as well as expeditious & honorable way of Superintending the Great Provinces of Trade & Plantations, a poor returne. I here Inclose the declaration under my hand & seale, w<sup>ch</sup> as it is a saveing to the Queen this is also writt for a saveing to

Honorable Friends

Your very

Respectfull Friend

WM PENN

I, underwritten do by these Presents declare and promise, that the Queen's Royal Approbation and Allowance of Capt. Charles Gookin to be Deputy Governor of Pennsylvania and the three lower Counties upon Delaware River, shall not be construed in any manner to diminish or set aside Her Majesty's Claim of Right to the said three Lower Counties.

In Witness whereof I have hereunto set my Hand and Seal, this second day of the mo. call'd July 1708

WM PENN

[Seal]

[*Indorsed* ]—P. R. O., B. T. Proprietaries. Vol. 10, Q. 110.

PENNSYLVANIA

Letter from M<sup>r</sup> Sec<sup>ry</sup> Stanhope of the 29<sup>th</sup> Decem<sup>r</sup> 1716 referring to the Board a Memorial of the Earl of Sutherland praying for a Grant of the 3 Lower Counties adjoining to Pennsylvania

Reced 11<sup>th</sup> Feb<sup>ry</sup> 171<sup>6</sup>/<sub>7</sub>

Read 13<sup>th</sup> D<sup>o</sup>

Q: 110.

Ent<sup>d</sup> G. fol 70

Ex<sup>d</sup>

Hanover 29 Dec: 1716. N. S.

My Lords and Gentlemen

Inclos'd I send You, by His Majesty's Command, the Memorial of the Earl of Sutherland, praying that His Majesty, in consideration of a considerable Debt from the Crown to his Lordship, and of his eminent Zeal and Services to His Majesty, would be pleased to grant him the Lands therein mention'd, the title to which he offers to make appear is in the Crown, tho' they are possess'd by others, and the King being inclined to favour his Lordship's request, I desire You will please to make Your report as Soon as conveniently may be that His Majesty may know what can properly be done in this business.

I am

My Lords & Gentlemen

Y<sup>r</sup> most humble and

Most obt Servant

JAMES STANHOPE

Council of Trade.

The humble Memorial of the Earl of Sunderland.

Ex<sup>d</sup>

To the King's most Excellent Majesty.

The humble Memorial of John Earl of Sutherland.

SHEWETH—

That there are considerable Arrears due to him Since the Revolution, amounting to above Twenty thousand pounds. That he has always testified his great Zeal and Activity for the Protestant Succession both before and Since Your Majesty's happy accession to the Throne, and given Singular proofs of his Fidelity and affection to Your Majesty by his Services in North Britain during the Rebellion there, in consideration whereof Your Majesty was pleased to express your favourable intentions of gratifying him upon any occasion. Wherefore He most humbly prays Your Majesty will be graciously pleased to grant him a Charter of certain Lands lying upon Delaware Bay in America, commonly called the three lower Counties, which he is ready to prove do belong to the Crown.

Hanover 29<sup>th</sup> Decemb 1716.

This Memorial having being laid before the King, His Majesty is pleased to refer the same to the R<sup>t</sup>.Hon<sup>ble</sup> the Lords of the Council of Trade, to consider thereof, and report their opinion, what is fit for His Majest to do therein, whereupon he will declare his further pleasure.

JAMES STANHOPE

[*Entry*].—P. R. O. Proprieties. B. T. Vol. 31, Page 70-1.

1716-17. Feb<sup>y</sup> To M<sup>r</sup> Attorney & Sollicitor General  
 13<sup>th</sup> Letter to GENTLEMEN  
 M<sup>r</sup> Att<sup>r</sup> & Soll<sup>r</sup> His Majesty having been pleas'd to refer to  
 Gen<sup>l</sup> upon the the Lords Commissioners for Trade and Plan-  
 aforesaid Me- tations the inclos'd Petition of the Earl of  
 morial Sutherlands praying for a Charter of certain  
 Islands lying upon Delaware Bay in America,  
 commonly called the three lower Counties, I  
 am commanded to desire You will please to let  
 their Lordships have your Opinion as soon as  
 conveniently may be whether it be in the Pow-  
 er of the Crown to dispose of those Lands pe-  
 tioned for.

I am further to acquaint you, that M<sup>r</sup> Penn  
 Proprietor of Pennsylvania has pretended some  
 Title to those Lands and that his Trustees are  
 Henry Goaldney, Silvanus Grove and Joshua  
 Gee,

I am

Gentlemen

Your most humble Serv<sup>t</sup>

W<sup>m</sup> POPPLE.

[*Indorsed.*].—P. R. O., B. T., Proprieties, Volume 10. Q. 131.

#### PENNSYLVANIA

L<sup>r</sup> from M<sup>r</sup> Att<sup>r</sup> & M<sup>r</sup> Soll<sup>r</sup> General inclosing a Copy of their  
 Report upon the Petition of y<sup>e</sup> Earl of Sutherland for a Grant  
 of y<sup>e</sup> three Lower Countries adjoining to Pennsylvania

Reced 29<sup>th</sup> Octo<sup>r</sup> }  
 Read 6 Nov<sup>r</sup> } 1717.

Entred G folio 127  
 Ex<sup>d</sup> 2: 134.

The Lords Commissioners for Trade and Plantations having  
 by Your Letter of the 13<sup>th</sup> of February last Required Our

Opinion on the Petition of the Earl of Sutherland Praying for a Charter of certain Lands lying upon Delaware Bay in America comonly called the Three lower Counties Whether it be in the power of the Crown to dispose of those Lands petitioned for: which petition had been referred to their Lordships by his Majesty, and his Majesty having been also pleased to Referr the Said Petition to Us, Wee have made our Report thereon to his Majestie and inclosed have Sent you a Copy of the said Report which may serve for an answer to the Question proposed to Us by their Lordships.

wee are

October. 28. 1717

S<sup>r</sup>

Y<sup>r</sup> very humble Serv<sup>ts</sup>

ED<sup>W</sup> NORTHEY

W<sup>M</sup> THOMSON

TO THE KING'S MOST EXCELLENT MAJESTY.

*May it please Your Majesty,*

In humble Obedience to your Majesty's Comands signified to Your Majesty's Attorney General by the Lord Viscount Stanhope when Secretary of State on the Memorial of the Right Honoble John Earl of Sutherland And Your Majesty having been pleased also to signifie your Comands by M<sup>r</sup> Methuen when Secretary of State to referr the said Memorial to Your Majesty's Sollicitor General We have jointly Considered of the said Memorial whereby the said Earl of Sutherland represents to Your Majesty that there are considerable arreares due to him since the Revolution amounting to above 20,000ls That he has always testified his great Zeal and Activity for the Protestant Succession both before and since Your Majesty's happy Accession to the Throne and given singular Proofs of his Fidelity and Affection to your Majesty by his Services in North Britain during the Rebellion there in Consideracon whereof Your Majesty was pleased to express your favourable Intentions of Gratifying him upon any Ocasion Wherefore he most humbly prays Your Majesty will be graciously pleased to Grant him a Charter of certain Lands lying upon Delaware Bay in America comonly called the



three Lower Counties which he represents he is ready to prove do belong to the Crown And we have given Notice thereof to the persons Concerned for William Penn Esq<sup>r</sup> and severall Mortgagees and Purchasers under him and also to the Lord Baltimore who severally claim Title to the said Lower Counties being called New Castle Kent and Sussex And we have heard them and their Agents thereupon And we do most humbly Certifie Your Majesty that the said William Penn is Intituled under the Grant of King Charles the Second to the Plantation of Pensilvania but that these Counties are not included in such Grant and his Title to Pensilvania is not now Contested.

And as to your Majesty's Title which the Earl of Sutherland has undertaken to make out to the said three Lower Counties he has Insisted that the same were gained by Conquest by the Subjects of Your Majesty's Predecess<sup>rs</sup> or Granted to Yo<sup>r</sup> Majesty's Predecessors by the Possessors thereof and that thereby Your Maj<sup>ty's</sup> Predecessors became Intituled to the same for that a Subject of the Crown could not make foreign Acquisitions by Conquest but for the Benefit of the Crown And that the length of possession will be no Barr to the Crown That for several Years last past M<sup>r</sup> Penn hath had possession of the said Lower Counties under a Pretence of a Grant thereof to him made in the Year 1682 by the late King James when Duke of York who then had the possession of New York and the said three Lower Countries ; but had no right to the said Lower Countries and therefore could not transferr any Right in the same to the said M<sup>r</sup> Penn which appears For that the said late King afterwards when Duke of York in the year 1683 obtained a Warrant from the then King Charles the Second to pass a Patent whereby the said three Lower Countries should have been Granted to the said then Duke of York and a Copy of a Bill to pass into a Grant in April 1683 to the said James Duke of York of the said three Lower Counties has been produced by the said Earl of Sutherland And it is alledged the same was never past into a Grant And that if the same had past into a Grant it would not have made M<sup>r</sup> Penn's Title to the said Three Lower Counties to be good, the Title of the said M<sup>r</sup> Penn under the Duke of York being precedent to the Title of the said Duke of York but that the same did remain in the said Duke of York and is consequently now in Your Majesty And that Your Maty's Title fur-

ther appears For that after in May 1683 when the then Lord Baltimore by Petition opposed the passing the said Bill under the Great Seal M<sup>r</sup> Penn then appeared against the said Lord Baltimore as Agent for the Crown and not on behalf of himself And M<sup>r</sup> Penn under his hand has declared that Your Majesty's Royal Approbation and Allowance of the Deputy Governor of Pensylvania and the three Lower Counties on Delaware River named by him shall not be Construed to diminish or sett aside the right claimed by the Crown to the said three Lower Counties Besides the said Earl of Sutherland Insists that in the Grant of the said Duke of York in 1682 to M<sup>r</sup> Penn of the said Three Lower Countries there is a Reservation of an Account to be made of One Moiety of the Profits of the Lands thereby granted touching which no Account has yet been rendred by M<sup>r</sup> Penn and that therefore if the said Grant in 1682 were effectual the said M<sup>r</sup> Penn is yet accountable to Your Maty for the Moiety of all the Profits of the Lands so granted from the year 1682 according to said Reservation, And that if the said Earl of Sutherland cannot by your Maty's favour be Intituled to the said Three Lower Countries he humbly prays he may have the benefit of the said Account.

In answer to which on the behalf of M<sup>r</sup> Penn's Mortgagees and other Purchasers under him it hath been alledged that the late King James the Second when Duke of York was Seized in ffee of the said Three Lower Countries and as one Argument to prove such Seizin they have produced Letters Patents dated the 29<sup>th</sup> day of June 26<sup>o</sup> Car 2<sup>li</sup> whereby his said late Maty King Charles the Second Granted to the said James late Duke of York his Heires and Assigns All that part of the Main Land of New England beginning at a certain place called or known by the name of S<sup>t</sup> Croix next adjoining to New Scotland in America and from thence extending along the Sea Coast unto a certain place called Pemaquinne or Pemaquid and so up the River thereof to the further head of the same as it tendeth Northward and Extending from the River of Kinebequin and so upwards by the shortest Course to the River Canada Northwards And all that Island or Islands comonly called by the several Name or Names of Matewaicks or Long Island situate and being towards the West of Cape Codd and the Narro Higansetts abutting upon the Main Land between the two Rivers there called or known

by the several Names of Connecticut and Hudson River together also with the said River called Hudson's River And all the Lands from the West side of Connecticut River to the East side of Delaware Bay And also all those severall Islands called or known by the Name of Martin Viniard and Nantaeks otherwise Nantakett Together with all the Lands Islands Soyles Rivers Harbours Mines Mineralls Quarries Woods Marshes Waters Lakes Fishings Hawkings Hunting and Fowling and all other Royalties Profits Commodities & Hereditaments to the said several Islands Lands and premises belonging and appertaining with their and every of their appurtenances And all his said late Maj<sup>ty</sup>s Estate Right Title and Interest benefit advantage Claim and Demand of in or to the said Lands and premises or any part or parcell thereof And the Reversion and Reversions Remainder and Remains together with the Yearly & other Rents Revenues & profits of the premises and of every part and parcell thereof att and under the Yearly rent of 40 Beaver Skins when they shall be lawfully demanded or within 90 days after such Demand made With powers of Government Within the Descriptions of which Grant it hath been agreed by both Parties that the said three Lower Countries are not contained. But on the behalf of M<sup>r</sup> Penn<sup>es</sup> it hath been insisted That by the General Words, Together with all the Lands Islands Soyles Rivers Harbours &c and all other Royalties profits Commodities and Hereditaments to the said several Islands Lands and premises belonging and appertaining with their and every of their appurtenances the said three lower Counties did pass as belonging to the premises expressly Granted by the said Letters Patents for that the three Lower Countries were enjoyed by the said late Duke of York together with New York which was granted by the said Letters Patents unto the said late Duke of York untill he granted the same to the said William Penn in 1682 by the Grants herein-after mentioned Which seems difficult to us to be maintained since the Abuttell in the said Letters Patents exclude the three Lower Countries But they presume the said late Duke of York might have some other Grants thereof which M<sup>r</sup> Penn might give an Account of but cannot being under a Lunacy And we do further humbly Certifie Your Majesty That by Indenture dated the 24<sup>th</sup> day of August 1682 made between the said late Duke of York of the one part and the said William Penn of the

other part the said late Duke of York for the consideracons therein menconed Did Bargain Sell Enfeoffe and Confirm to the said William Penn and his Heires All that the Town of New Castle otherwise called Delaware And all that Tract of Land lying within the Compass or Circle of Twelve Miles about the same scituate lyeing and being upon the River Delaware And all Islands in the said River Delaware and the said River and Soil thereof lying North of the Southermost part of the said Circle of Twelve Miles about the said Town together with all Rents Services Royalties Franchises Duties Jurisdiccions Liberties and Priviledges thereunto belonging And all the Estate Right Title Interest Powers Property Claim and Demand whatsoever of the said late Duke of in or to the same or to any part or parcell thereof At and under the Yearly Rent of Five shillings With a Covenant for farther Assurance And the said late Duke did thereby Consitute and appoint John Moll and Ephraim Harman or either of them his Attorney with full power for him and in his Name and Stead to deliver Seizin of the premisses granted by the last recited Indenture to the said William Penn and his Heirs And the said late Duke of York by another Indenture bearing date the said 24<sup>th</sup> August 1682 and made between the said late Duke of York of the one part and the said William Penn of the other part for the consideracons therein mentioned did bargain Sell Enfeoffe and Confirm unto the said William Penn and his Heires All that Tract of Land upon Delaware River & Bay beginning twelve miles South from the Town of New Castle otherwise called Delaware & extending South to the Where Kills otherwise called Capin Lopen together with free and undisturbed Use and passage into and out of all Harbours Bays Waters Rivers Isles and Inlets belonging to or leading to the same together with the Soyle Fields Woods Underwoods Mountains Hills Fenns Isles Lakes Rivers Rivulets Bays and Inlets scituate in or belonging unto the Limits and Bounds afore-said together with all sorts of Minerals and all the Estate Interest Royalties Franchises Powers Priviledges and Imunities whatsoever of the said Duke of York therein or in or unto any part or parcell thereof at and under the Yearly Rent of One Rose In which said last mentioned Indenture is contained a Covenant on the part of the said William Penn his Heirs or Assignes within the space of One Year next ensueing the Date of the same Indenture to erect or cause to be erected

and set up one or more Publick Office or Offices of Registry in or upon the said last bargained premisses wherein truly and faithfully to account set down and Register all and all manner of Rents and other Profits which he or they or any of them shall by any ways or means make raise get or procure of in or out of the said last bargained premisses or any part or parcell thereof and also at the Feast of S<sup>t</sup> Michael the Archangel Yearly and every Year shall well and truly yield pay and deliver unto the said late Duke of York his Heires and Assignes One full Moiety of all and all manner of Rents Issues and profits as well extraordinary as ordinary as shall be made or raised upon or by reason of the p<sup>r</sup>misses or any part thereof With power to the said late Duke of York his heires and Assignes in case the same shall be in arreare twenty days to enter in and upon the same premisses or any part thereof and there to distrain and the Distresses to detain untill payment of the said Moiety and Arreares thereof together with all Costs and Damages for the same And by the same Indenture the said John Moll and Ephraim Harman or either of them were appointed in like manner Attorney or Attornies to deliver Seizin of the last bargained premisses to the said William Penn and his heires Both which said Indentures were Entered in the Office of Records for the Province of New York on the 21<sup>st</sup> Nov<sup>r</sup> 1682 within which said Grants the said three Lower Counties are contained but the Covenant to account extends only to what is included in the last recited Grant.

That by an Order by the Comander in Chief and Council of New York dated at New York 21 Nov<sup>r</sup> 1682 reciting the said two recited Indentures And reciting that the said Comander and Council were fully satisfied of the said William Penn's Right to the possession and Enjoyment of the premises had therefore thought fit and necessary to signifie and declare the same to the several justices of the Peace Magistrates and other Officers at New Castle S<sup>t</sup> Jones Deale als Whore Kill at Delaware or within any of the Bounds and Limits above menconed to prevent any Doubt or trouble that might arise and after having thanked the said Magistrates for their good services in their several Offices & Stations during the time they remained under his said late Royal Highness's Government they declare they expected no further Account than that they should readily













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